Nos. 4125 and 4126

1366 United States 1366

Circuit Court of Appeals

For the Ninth Circuit.

No. 4125.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff in Error,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant in Error.

No. 4126.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff in Error,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writs of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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No. 4125

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vs.

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Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Names and Addresses of Attorneys of Record.

Messrs. PILLSBURY, MADISON & SUTRO, Standard Oil Bldg., San Francisco, Calif., Attorneys for Plaintiff in Error.

Messrs. REDMAN & ALEXANDER, Aetna Bldg., San Francisco, Calif., Attorneys for Defendant in Error.

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

Amended Complaint upon Attachment Bond.

Plaintiff, by leave of Court, files this its amended complaint against defendant and for a first cause of action alleges:

I.

That at all times herein mentioned plaintiff was and is now a corporation organized and existing under the laws of the State of New York, and is a citizen and resident of said State of New York.

II.

That at all times herein mentioned defendant was and is now a corporation organized and existing under the laws of the State of Maryland, and is a citizen and resident of said State of Maryland.

III.

That the matter in controversy in this action exceeds, exclusive of interest and costs, the sum of $3,000; that the value of the subject matter of this action exceeds, exclusive of interest and costs, the sum of $3,000.

IV.

That heretofore, to wit, on or about the 28th day of August, 1920, one Warren R. Porter, commenced an action in the above-entitled court against the plaintiff herein, to recover damages from plaintiff for alleged breaches by plaintiff of certain written contracts between plaintiff and said Warren R. Porter; that said action was numbered in said court No. 16,430; that thereafter, in said action, and on or about the 6th day of December, 1920, said Warren R. Porter procured a writ of attachment to issue out of and over the seal of said court against the property of plaintiff. [1*]

V.

That on or about said 6th day of December, 1920, and in consideration of the issuance of said writ of attachment, defendant executed a certain written bond and undertaking, a copy of which is hereto attached and marked Exhibit "A" and is hereby

*Page-number appearing at foot of page of original certified Transcript of Record.

referred to and made a part hereof the same as if herein set forth at length.

VI.

That on or about the 21st day of November, 1921, there were pending in said court, in addition to said action No. 16,430, three certain other actions between said Warren R. Porter and this plaintiff, which said actions were numbered in said court, respectively, No. 16,452, No. 16,498 and No. 16,518; that all of said actions arose out of the same transactions as said action No. 16430, and involved issues substantially similar to the issues in said action No. 16,430.

VII.

That on or about said 21st day of November, 1921, by an order of said court on said day duly given or made and entered, said actions No. 16,430, No. 16,452, No. 16,498 and No. 16,518 were consolidated for all purposes; that thereafter, pursuant to said order of said court, all of said actions were collectively entitled in said court "Warren R. Porter, doing business under the name and style of Porter Trading Company, Plaintiff, vs. Java Cocoanut Oil Co., Ltd., a Corporation, Defendant," and were numbered therein as No. 16,430.

VIII.

That thereafter and on or about the 8th day of December, 1921, judgment was duly given or made and entered in said consolidated action No. 16,430; that said judgment was that said Warren R. Porter take nothing by said consolidated action No. 16,430, and that this plaintiff have and recover from said

Warren R. Porter the sum of $494,498.30 damages and its costs of suit; that thereafter, and on or about the 23d day of December, 1921, said costs in said consolidated action No. 16,430 were duly taxed in favor of this plaintiff and against said Warren R. Porter in the sum of $2,569.45. [2]

IX.

That of said sum of $2569.45, the sum of $1591.64 was awarded to and in favor of this plaintiff, and against said Warren R. Porter, on account of said original action No. 16,430, in which defendant executed said written bond and undertaking Exhibit "A"; that said sum of $1591.64 was awarded to this plaintiff as its costs in said original action No. 16,430; that said sum of $1591.64 includes no items of costs in said action No. 16,452, or in said action No. 16,498, or in said action No. 16,518, or in any other action except said original action No. 16,430, wherein defendant executed said written bond and undertaking Exhibit "A."

X.

That writs of execution against the property of said Warren R. Porter have issued out of and over the seal of said court in said consolidated action No. 16,430, and returned unsatisfied; that there is now due, owing and unpaid on said judgment from said Warren R. Porter to plaintiff herein the sum of $441,557.40 or thereabouts, together with interest thereon at the rate of seven per cent per annum from the 10th day of March, 1922. That, although thereunto requested, defendant has not paid said sum of $1591.64, or any part thereof, to plaintiff,

and the whole of said sum of $1591.64 is now due, owing and unpaid from defendant to plaintiff herein.

XI.

That all and singular the matters and things alleged in this cause of action are ancillary to said original action No. 16,430 and within the jurisdiction of this Honorable Court.

And for a second cause of action plaintiff alleges:

I.

Plaintiff hereby refers to and repeats and makes a part hereof, to all intents and purposes the same as if herein set forth at length, the allegations of paragraphs, I, II, III, IV, V, VI, VII, VIII and X of the first cause of action herein.

II.

That to procure the dissolution of said attachment, it [3] was necessary for plaintiff to defend said original action No. 16,430 and said consolidated action No. 16,430; that plaintiff employed for such purpose the law firm of Pillsbury, Madison & Sutro; that said firm represented plaintiff in said original action No. 16,430, and said consolidated action No. 16,430, and defended the same for plaintiff.

III.

That for the services of said firm in said original action No. 16,430 and said consolidated action No. 16,430, plaintiff has paid to said firm sums in excess of $25,000, of which the sum of $15,000 was paid for services of said firm rendered to plaintiff subsequent to the issuance of said attachment and to secure the dissolution thereof; that is to say, that

plaintiff has paid said sum of $15,000 to said firm for services rendered by said firm subsequent to the 6th day of December, 1920, in defending said original action No. 16,430 and said consolidated action No. 16,430, in so far as the same related to the said original action No. 16,430; that no part of said sum of $15,000 was paid to said firm for services in or in connection with said actions No. 16,452, No. 16,498 and No. 16,518, or any thereof, or for services in said consolidated action No 16,430 relating to said three last-mentioned actions, or any thereof; that said sum of $15,000 was the reasonable value of the services of said firm in securing the dissolution of said attachment, and was a reasonable sum for plaintiff to have paid to said firm for that purpose.

IV.

That plaintiff has sustained damages by reason of said attachment in the sum of $15,000 which it has paid to said firm, as hereinbefore alleged; that although thereunto requested, defendant has not paid said sum of $15,000, or any part thereof, to plaintiff, and that the whole of said sum is now due, owing and unpaid from defendant to plaintiff herein.

V.

That all and singular the matters and things alleged in this cause of action are ancillary to said original action [4] No. 16,430, and within the jurisdiction of this Honorable Court.

WHEREFORE, plaintiff prays judgment against defendant for the sum of $16,591.64, together with

interest on the sum of $1591.64 at the rate of seven per cent per annum from the 8th day of December, 1921, and for its costs of suit.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

State of California,
City and County of San Francisco,—ss.

Alfred Sutro, being first duly sworn, deposes and says: That he is a member of the firm of Pillsbury, Madison & Sutro, attorneys for the plaintiff, Java Cocoanut Oil Company, Ltd., a corporation, named in the foregoing amended complaint; that the reason this affidavit is not made by an officer of said plaintiff, but is made by affiant, is that there is no officer of the plaintiff in the city and county of San Francisco, State of California, where affiant resides and has his office; that affiant has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

ALFRED SUTRO.

Subscribed and sworn to before me this 14th day of June, 1922.

[Seal] FRANK L. OWEN,
Notary Public in and for the City and County of San Francisco, State of California. [5]

Exhibit "A."

(Title of Court and Cause.)

UNDERTAKING AND ATTACHMENT.

WHEREAS, the above-named plaintiff has commenced, or is about to commence, an action in the Southern Division of the U. S., for the Northern District of California, Second Division, against the above-named defendants upon express contract for the direct payment of money, claiming that there is due to said plaintiff from the said defendants the sum of Seventy-Two Thousand One Hundred Sixty-Six and 25/100 Dollars, besides interest, and is about to apply for an attachment against the property of said defendants as security for the satisfaction of any judgment that may be recovered therein;

NOW, THEREFORE, the undersigned, Fidelity and Deposit Company of Maryland, a corporation duly organized and existing under the laws of the State of Maryland and duly authorized and licensed by the laws of the State of California to do a general surety business in the State of California, in consideration of the premises, and of the issuing of said attachment, does undertake in the sum of Thirty-Six Thousand Eighty-Three and 15/100 (36,083.15) Dollars, lawful money of the United States of America, and promise to the effect, that if the said Defendants or either of them, recover judgment in said action, the said Plaintiff will pay all costs that may be awarded to the said Defend-

ants or either of them and all damages which they or either of them may sustain by reason of the said attachment, not exceeding the said sum of Thirty-Six Thousand Eighty-Three and 15/100 (36,083.15) Dollars; and that if the said attachment is discharged on the ground that Plaintiff was not entitled thereto under section five hundred and thirty-seven, Code of Civil Procedure, the Plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the said sum specified in the undertaking.

IN WITNESS WHEREOF, The Fidelity and Deposit Company of Maryland, has caused its name to be hereunto subscribed by its Attorney in Fact, and attested by its agent thereunto duly [6] authorized, and its seal to be hereunto affixed, this 6th day of December, A. D. 1920.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

By JOHN H. ROBERTSON,

Its Attorney in Fact.

[Seal] Attest: S. M. PALMER,

Agent.

[Endorsed]: Filed Dec. 7, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Receipt of copy of the within amended complaint is hereby admitted this 14th day of June, 1922.

REDMAN & ALEXANDER,

Attorneys for Defendant.

[Endorsed]: Filed Jun. 15, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [7]

(Title of Court and Cause.)

Demurrer to Amended Complaint.

Now comes the defendant in the above-entitled action and demurring to the amended complaint of the plaintiff herein, as grounds of demurrer specifies:

I.

That said amended complaint does not state facts sufficient to constitute a cause of action.

II.

That said amended complaint is uncertain, ambiguous and unintelligible in the particulars hereinafter specified.

III.

That the first count or alleged cause of action set up in said amended complaint does not state facts sufficient to constitute a cause of action.

IV.

That the second count or alleged cause of action set up in said amended complaint does not state facts sufficient to constitute a cause of action.

V.

That said second count is uncertain in the following particulars:

1. That it cannot be ascertained therefrom what services were rendered by the law firm of Pillsbury, Madison & Sutro in defending said action No. 16,-430 that would not have been rendered had no attachment been issued in said action.

2. That it cannot be ascertained therefrom what services were rendered by said attorneys to secure a dissolution of said attachment other than services rendered in defending said action.

3. That it cannot be ascertained therefrom whether or not the sum of fifteen thousand dollars ($15,000.00) alleged to have been paid to said attorneys for services rendered by them subsequent to the issuance of said attachment embraced services rendered subsequent to said time in the prosecution of plaintiff's cross-complaint in said action No. 16,430 wherein [8] plaintiff recovered a judgment against said Warren R. Porter in the sum of four hundred ninety-four thousand, four hundred ninety-eight dollars and thirty cents ($494,498.30).

4. That it cannot be ascertained therefrom how, or why, or if, it became necessary in order to secure a dissolution of said attachment to prosecute a cross-complaint against said Warren R. Porter to recover said sum of four hundred ninety-four thousand, four hundred ninety-eight dollars and thirty cents ($494,498.30).

5. That it cannot be ascertained therefrom how defendant can be liable for costs incurred by plaintiff in the prosecution of its said cross-complaint against said Porter.

6. That it cannot be ascertained therefrom what costs were incurred by plaintiff in defending said action No. 16,430 and what costs were incurred by it in the prosecution of its said cross-complaint against said Porter.

7. That said second count is ambiguous in the same respects in which it is herein alleged to be uncertain.

8. That said second count is unintelligible in the same respects in which it is herein alleged to be uncertain.

WHEREFORE, defendant prays that plaintiff take nothing by this action and that defendant have judgment for its costs.

REDMAN & ALEXANDER,
Attorneys for Defendant.

Receipt of a copy of the within demurrer to amended complaint admitted this 14th day of July, 1922.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Jul. 15, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [9]

At a stated term, to wit, the July term, A. D. 1922, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Monday, the 18th day of September, in the year of our Lord one thousand nine hundred twenty-two. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

(Title of Cause.)

Minutes of Court—September 18, 1922—Order Overruling Demurrer to Amended Complaint.

Defendant's demurrer to the amended complaint heretofore submitted to the Court, Judge Dietrich presiding, being fully considered it is ordered that the memorandum opinion of Judge Dietrich be filed and that in accordance with said opinion, the demurrer to amended complaint be and is hereby overruled. [10]

(Title of Court and Cause.)

Memorandum Decision upon Demurrer to Amended Complaint.

PILLSBURY, MADISON & SUTRO, Attorneys for Plaintiff.

REDMAN & ALEXANDER, Attorneys for Defendant.

DIETRICH, District Judge.—The question is raised whether objection for uncertainty in a complaint can be presented by demurrer. When the original pleading was under consideration I assumed as a matter of course that demurrer was the proper procedure, such having, as I understood, always been the practice, both in California and in Idaho, where the California code provisions prevail. After the original decision was filed my attention was called to the Lucid case (199 Fed. 377). I have not before me the record in this case, and am

not disposed now to give the question extended consideration, for it would seem to me quite unimportant, in view of the general rule that courts disregard the names of things and look to the substance. What does it matter whether we call the paper here a motion or a demurrer? It clearly states defendant's objections for uncertainty, and these I am disposed to consider upon the merits.

The amended complaint is thought to be reasonably clear, and in each cause of action the facts pleaded are sufficient to entitle the plaintiff to relief. By so holding I am not to be understood as foreclosing certain questions discussed by the defendant partly upon the assumption of facts appearing only by remote inference or in the records of the attachment cases. Those questions, it is thought, can be more safely answered when the evidence is in. The plaintiff has not seen fit to exhibit in full the records in the attachment cases, but has pleaded sparingly and cautiously, as is its right. Some of the essential averments may be difficult of proof, but at this juncture we are not at liberty to consider whether plaintiff will be able satisfactorily to establish the truth of its averments. It has [11] specifically alleged that, to procure the dissolution of the attachment upon which the bond in question was given, it was necessary for it to defend the action upon the merits, that plaintiff employed for such purpose a law firm, and that this firm represented it in such defense, which, as already suggested, it claims it was necessary to make for the purpose of ridding itself of the attachment. It is further clearly claimed that the

services for which the plaintiff now seeks reimbursement were rendered in the action in which the bond was given, and not in any other action, and were rendered subsequent to the issuance of the attachment and to secure its dissolution, and that the sum paid for the services was without any reference to services rendered in others of the consolidated suits.

Defendant now argues that under all the circumstances it must be apparent that the services were rendered primarily in defense of the suit, and that the dissolution of the attachment was a mere incident. That may turn out to be true, but such a theory is not in harmony with the allegations of the pleading.

The demurrer will be overruled.

[Endorsed]: Filed Sept. 18, 1922. Walter B. Maling, Clerk. [12]

(Title of Court and Cause.)

Answer to Amended Complaint.

Now comes the defendant in the above-entitled action and answering unto the amended complaint therein denies and alleges as follows:

I.

Answering unto the first count set up in said complaint defendant,

1. Alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegation contained in the first subdivision or paragraph of said count, and therefore and upon that ground denies the same and the whole thereof.

2. Denies that the value of the subject matter of this action exceeds, exclusive of interest and costs, the sum of three thousand dollars ($3,000.00), or any other sum.

3. Defendant has no information or belief upon the subject sufficient to enable it to answer the allegation that all of the actions referred to in said count arose out of the same transactions as the action numbered 16430, and involved issues substantially similar to the issues in said action numbered 16430, and therefore and upon that ground denies the same and the whole thereof.

4. Denies that all and singular or all or singular the matters and things, or any thereof, alleged in said count are or is ancillary to said original action numbered 16430.

5. Admits that costs were taxed in favor of the defendant in the action referred to in said count numbered 16430 in the sum of one thousand five hundred ninety-one dollars and sixty-four cents ($1,591.64), but alleges that said costs were incurred in part in the prosecution of a cross-complaint filed in said action by the defendant therein, the plaintiff herein, upon which cross-complaint defendant recovered judgment against plaintiff in said action in the sum of four hundred ninety-four [13] thousand, four hundred ninety-eight dollars and thirty cents ($494,498.30).

6. Denies that the sum of one thousand five hundred ninety-one dollars and sixty-four cents ($1,591.64), or any other sum, is now due, owing and un-

paid, or was at any time due or owing or unpaid from defendant to plaintiff.

II.

Answering unto the second count set up in said complaint, defendant,

1. Alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegation contained in the first subdivision or paragraph of said count, and therefore and upon that ground denies the same and the whole thereof.

2. Denies that the value of the subject matter of this action exceeds, exclusive of interest and costs, the sum of three thousand dollars ($3,000.00), or any other sum.

3. Denies that the sum of one thousand five hundred ninety-one dollars and sixty-four cents (1,591.64), or any other sum, is now due, owing and unpaid, or was at any time due or owing or unpaid from defendant to plaintiff.

4. Denies that to procure the dissolution of the attachment referred to in said count it was necessary for the plaintiff herein, the defendant in said action No. 16430, to defend said action.

5. Defendant has no information or belief upon the subject sufficient to enable it to answer the allegation that the plaintiff herein paid to the law firm of Pillsbury, Madison & Sutro sums in excess of the sum of twenty-five thousand dollars ($25,000.00) for services rendered by said firm in said original action No. 16430, and said consolidated action No. 16430, and therefore and upon that ground denies that the plaintiff herein paid for said or any services

rendered by said firm or any one in both or either of said actions sums in excess of twenty-five thousand dollars ($25,000.00) or any other sum. Defendant denies upon information and belief that the sum of fifteen [14] thousand dollars ($15,000.00) was paid for services of said firm rendered to plaintiff subsequent to the issuance of said attachment, and denies that said sum was paid by plaintiff to said firm to secure the dissolution of said attachment; and denies that said sum of fifteen thousand dollars ($15,000.00), or any other sum, was or is the reasonable or any value of the services of the said firm in securing the dissolution of said attachment; and denies that any services were rendered by said firm in securing the dissolution of said attachment; and denies that said or any sum was a reasonable sum for plaintiff to have paid said firm for that purpose.

6. Denies that plaintiff has sustained damages or any damage by reason of said attachment in the sum of fifteen thousand dollars ($15,000.00), or any other sum; and denies that the whole of said sum or any other sum is now due, owing and unpaid, or at any time was or is due or owing or unpaid from the defendant to plaintiff.

7. Defendant has no information or belief upon the subject sufficient to enable it to answer the allegation that all of the actions referred to in said count arose out of the same transactions as the action numbered 16430, and involved issues substantially similar to the issues in said action numbered

16430, and therefore and upon that ground denies the same and the whole thereof.

8. Denies that all and singular, or all or singular the matters and things, or any thereof, alleged in said count are or is ancillary to said original action numbered 16430.

WHEREFORE, defendant prays that plaintiff take nothing by this action and that defendant have judgment for its costs.

REDMAN & ALEXANDER,
Attorneys for Defendant. [15]

United States of America,
State of California,
City and County of San Francisco,—ss.

Guy LeRoy Stevick, being first duly sworn, deposes and says: That he is an officer of the defendant in the above-entitled action, namely one of the vice-presidents thereof. That he has read said answer and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated upon information or belief and that as to such matters he believes it to be true.

GUY LEROY STEVICK.

Subscribed and sworn to before me this 9th day of October, 1922.

[Seal] OLIVER DIBBLE,
Notary Public in and for the City and County of San Francisco, State of California.

Service of the within answer admitted this 9th day of October, 1922.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 9, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [16]

(Title of Court and Cause.)

Stipulation Waiving Jury.

It is hereby stipulated by and between the respective parties to the above-entitled action that a jury in said action be, and the same is hereby, waived.

Dated: San Francisco, April 17, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.
REDMAN & ALEXANDER,
Attorneys for Defendant.

Approved: BOURQUIN,
Judge.

[Endorsed]: Filed Apr. 19, 1923. Walter B. Maling, Clerk. [17]

(Title of Court and Cause.)

Judgment.

This cause having come on regularly for trial on the 25th day of April 1923, being a day in the March, 1923 term, of said Court, before the Court sitting without a jury, a trial by jury having been specially waived by stipulation filed herein; Alfred Sutro, Esq., appearing as attorney for plaintiff and L. A. Redman, Esq., appearing as attorney for defendant; and the trial having been proceeded with and oral

and documentary evidence upon behalf of the respective parties having been introduced and closed and the cause, after arguments by the attorneys, having been submitted to the Court for consideration and decision; and the Court after due deliberation, having filed its opinion and ordered that judgment be entered in favor of plaintiff and against defendant in the sum of $1591.64, together with interest at 7% per annum from December 8, 1921, and for costs:

Now therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Java Cocoanut Oil Company, Ltd., a corporation, plaintiff, do have and recover of and from Fidelity and Deposit Company of Maryland, a corporation, defendant, the sum of Seventeen hundred forty-six and 38/100 ($1746.38) Dollars, together with its costs herein expended taxed at $25.80.

Judgment entered April 28, 1923.

WALTER B. MALING,
Clerk. [18]

United States District Court, California.

No. 16715.

JAVA ETC. CO.

vs.

FIDELITY ETC. CO.

No. 16716.

JAVA ETC. CO.

vs.

GLOBE ETC. Co.

(Decision, Etc.)

These actions tried together are against sureties in undertakings on attachments against plaintiff. It appears that one Porter brought actions against plaintiff, it counter-claimed and cross-complained, itself brought actions against Porter, was attached and itself attached, and defendants separately were Porter's sureties in his attachment undertaking; that a few days after levy in said actions, plaintiff gave to the marshal the statutory security for and secured discharge of the lien and release of the property; that in due time all the actions were consolidated and tried, resulting in judgment for plaintiff and against Porter in amount about $500,000; that of the costs recovered, $1591.64 are due to the action of the undertaking of the action first in the title named, and $869.19 are due to the like of the action, second so named; that of $50,000 attorneys, fees paid by plaintiff in respect to the actions, no allocation was made between services due to the attachments and services due to the actions otherwise; that of said fees, $15,000 "is the reasonable value of the services rendered subsequent" to the levy of the attachment, "in defending" the action of the undertaking first aforesaid, original and consolidated, and $10,000 are the like in respect to the action of the undertaking second aforesaid.

Plaintiff seeks recovery of said costs and fees upon the theory that the attachments endured until trial and determination of the actions upon the merits, that the latter was [19] necessary to dis-

pose of the former, and that the whole of said disbursements are "costs awarded" and damages sustained "by reason of the attachment." In support it cites amongst others,

Gregory vs. Co. (Kan.), 185 Pac. 35;
Mosely vs. Co. (Idaho), 189 Pac. 862;
Crom vs. Henderson (Iowa), 175 N. W. 983;
Anvil Gold Co. Case, 125 Fed. 725.

Defendant, *contra,* so far as said fees are concerned, cites St. Josephs etc. Co. vs. Love (Utah), 195 Pac. 308 and other cases in it referred to. These cases and their citations disclose the conflict in respect to the extent that attorneys' fees are damages in attachments, and that, tho involving statutes of little or no material difference without review of them and their distinctions and differences, it suffices to say that it is believed the theory of defendants, viz., that reasonable attorneys' fees paid in respect to the attachments alone and not those paid in respect to the merits of the action, are damages "by reason of" the attachments and for which sureties are liable, is the better rule, sound in principle, sustained by superior authority, and further locally justified by analogy.

Attachments are incidents of an action, and are provisional remedies to secure the fruits of success in trial and determination of the action on the merits. Attorneys' services may or may nor be required in respect to the attachments, but are required in respect to the action. Any services rendered to dispose of the attachments, are "by reason of" the attachments, but any rendered to dispose of the ac-

tion and its merits are not "by reason of" the attachments. They are "by reason of" the action, quite a different thing in fact, statutes and undertaking. That by success upon trial of the action and its merits the attachments are dissolved, is an incidental consequence of services rendered in respect to the former and not to the latter. The rule is like that in respect to other provisional remedies, injunctions, replevin, receiverships. Altho no local court seems to have determined a like issue in an attachment action, the case of Alaska Co. vs. Hirsch (Cal.), 47 Pac. 127, is analogous in its rule that attorneys' [20] fees for dissolution of an injunction are damages "by reason of" it and recoverable from sureties, but not those for trial of the action and its merits, even tho in the latter the enjoined party succeeding, necessarily dissolves the injunction. Clearly, had the party enjoined secured its dissolution on bond, as the plaintiff in the instant case did the attachments, his claims of right to assign attorneys' fees for trial of the action and its merits as damages "by reason of" the injunction, and to recover them from the sureties, would not have been bettered. So, here. Bonds given by plaintiff (perhaps in duty to minimize damages and the expense of which is awarded it), the levies and the liens and so the "attachments" were released altho the writ was not vacated but endured until it necessarily fell by reason of judgment on the merits for plaintiff. The mere existence of a writ, however, gives no cause of action for damages in so far as attorneys' fees are concerned at least. See Long

vs. Bank (Idaho), 165 Pac. 1119. Attachment liens released "the attachments had spent their force and the surety companies became responsible for all damages attributable directly to the attachments." However, subsequent and indirect damages, due to "bringing of the actions may also have damaged or added to the damages, * * * but such result was not due to the attachment"; and the attaching party "and not the surety company was the party responsible therefor."

Fidelity Co. vs. Co., 189 U. S. 143, a case fairly analogous in facts and principle.

So too is the Anvil Gold Co. case, 125 Fed. 725. There as here, the "attachment" was dissolved on security bond, tho there, by order of court; here, by order of statute. Attorneys' fees as costs or damages are not favored and are recoverable only when with clear support in contract or statute. Plaintiff not having segregated fees for services due to the attachments from those due to the trial of the action, cannot recover for them. It may be on sufficient data an allowance might be made by the Court, but apparently plaintiff seeks all [21] or none.

So far as costs are concerned, defendants concede them and moved for judgment for plaintiff to that extent.

In argument, however, counsel suggests plaintiff ought not recover $500 it paid for an attachment undertaking in one of the actions and prior to Porter's attachment and the Fidelity Co.'s undertaking in the same action.

The sum is within the statutes and defendants'

undertaking—"costs awarded," and hence, recoverable.

Unlike damages, costs are not by the statute limited to those "by reason of" the attachment, but include all by reason of or in the action. It is significant that the statute makes this distinction, and impels construction accordingly. Even as plaintiff above, defendant is disposed to ignore small things, advising the court that if it does erroneously allow the item to plaintiff, no review will be sought, for—*De minimis non curat lex.*

A magnificent gesture to say the least, and a little more this exuberant generosity and lordly spirit, plaintiff's demands might have been paid in full without litigation. Plaintiff is entitled to recover the costs aforesaid, of and from defendants as follows:

From Fidelity Co. $1591.64;

From Globe Co. $869.19, with local legal interest from Dec. 8, 1921, and costs herein. Judgments accordingly.

April 28, 1923.

BOURQUIN, J.

[Endorsed]: Filed April 28, 1923. Walter B. Maling, Clerk. [22]

(Title of Court and Cause.)

Stipulation and Order Extending Time to and Including June 15, 1923, for Preparation, Settlement and Allowance of Bill of Exceptions.

It is hereby stipulated by and between the parties

to the above-entitled action that the plaintiff above named may have to and including the 15th day of June, 1923, within which to prepare, serve and file its proposed bill of exceptions in the above-entitled action.

It is further stipulated that said bill of exceptions may be signed, settled and allowed by the Judge of the above-entitled court during the next ensuing term of said court, as well as during the term in which the judgment in the said action was rendered, and the jurisdiction of the above-entitled court to act upon, settle and allow such bill of exceptions is hereby extended from the present term of said court to and including the next ensuing term of said court, that is to say, to and including Monday, November 5, 1923.

Dated: San Francisco, May 4, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.
REDMAN & ALEXANDER,

It is so ordered.

PARTRIDGE,
District Judge.

[Endorsed]: Filed May 7, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [23]

(Title of Court and Cause.)

Stipulation and Order Extending Time to and Including July 15, 1923, for Preparation of Bill of Exceptions.

It is hereby stipulated by and between the parties to the above-entitled action that the plaintiff above named may have to and including the 15th day of July, 1923, within which to prepare, serve and file its proposed bill of exceptions in the above-entitled action.

Dated: San Francisco, June 4, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

REDMAN & ALEXANDER,
Attorneys for Defendant.

It is so ordered.

VAN FLEET,
District Judge.

[Endorsed]: Filed Jun. 5, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [24]

(Title of Court and Cause.)

Stipulation and Order Extending Time to and Including August 15, 1923, for Preparation, Settlement and Allowance of Bill of Exceptions.

It is hereby stipulated by and between the parties to the above-entitled action that the plaintiff above named may have to and including the 15th day of

August, 1923, within which to prepare, serve and file its proposed bill of exceptions in the above-entitled action.

Dated: San Francisco, July 3, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.
REDMAN & ALEXANDER,
Attorneys for Defendant.

It is so ordered.

FRANK H. RUDKIN,
District Judge.

[Endorsed]: Filed Jul. 5, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [25]

(Title of Court and Cause.)

Stipulation and Order Extending Time to and Including September 15, 1923, for Preparation, Settlement and Allowance of Bill of Exceptions.

It is hereby stipulated by and between the parties to the above-entitled action that the plaintiff above named may have to and including the 15th day of September, 1923, within which to prepare, serve and file its proposed bill of exceptions in the above-entitled action.

Dated: San Francisco, August 6th, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.
REDMAN & ALEXANDER,
Attorneys for Defendant.

It is so ordered.

WM. C. VAN FLEET,
District Judge.

[Endorsed]: Filed Aug. 6, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [26]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Bill of Exceptions.

On Wednesday, the 25th day of April, 1923, the above-entitled actions came on regularly for trial before the above-entitled court, the Honorable

George M. Bourquin, sitting as Judge thereof, juries having been duly waived in the manner required by law, by written stipulation filed in each of said actions in the office of the clerk of said court. Alfred Sutro, Esq., appeared as attorney for the plaintiff, L. A. Redman, Esq., as attorney for the defendant, Fidelity and Deposit Company of Maryland, and Hartley F. Peart, Esq., as attorney for the defendant Globe Indemnity Company. [27]

Thereupon the following proceedings were had:

"Mr. SUTRO.—There are two cases, I understand that the Clerk called both of them.

The COURT.—The Court understands that they are to be tried together.

Mr. SUTRO.—The understanding is that they are.

Mr. REDMAN.—That is agreeable to us; the questions involved are substantially the same. We might as well try both together.

Mr. SUTRO.—May I briefly state, your Honor, the nature of the facts in these two cases.

If your Honor please, there are two cases here, as has been stated, one against the Fidelity & Deposit Company of Maryland, and the other against the Globe Indemnity Company, the plaintiff in each case being the Java Cocoanut Oil Company, Ltd. The nature of each action is the same. The amounts involved in the two cases are a little different. The facts are few and simple, and I am going to take the liberty of reading to your Honor the allegations of the complaint, which I apprehend will not take long, and I think the time will not be wasted if I call your

Honor's attention to the facts as set out in the complaint."

Here Mr. Sutro read the allegations of the two amended complaints.

Mr. SUTRO (Continuing.).—"The issues raised by the answers, I may briefly state to your Honor, are as follows: The incorporation of the plaintiff is denied. That, I understand, is waived by stipulation. Am I correct or not?

Mr. REDMAN.—Yes, we concede that.

Mr. SUTRO.—That will appear of record as waived in each action.

The COURT.—Yes." [28]

Here Mr. Sutro stated the issues raised by the respective answers of the defendants to the amended complaints.

Mr. SUTRO (Continuing).—"I would like, if your Honor please, to offer a stipulation in each action which has been made between the respective parties touching the value of the services as alleged in the complaint, that having been done to avoid the necessity of taking considerable testimony.

In the case of Fidelity Company, the stipulation reads as follows:

(Title of Court and Cause.)

'It is hereby stipulated by and between the respective parties to the above-entitled action that the sum of $15,000 is the reasonable value of the services rendered subsequent to the 20th day of December, 1920, by Messrs. Pillsbury, Madison & Sutro as attorneys for plaintiff, in defending the original

action No. 16,430, referred to in the complaint herein, and consolidated action No. 16,430, in so far as the same relates to said original action No. 16,430.

Defendant makes this stipulation subject to the reservation that it shall not be construed as an admission by defendant that the facts stipulated to are admissible in evidence in this case, and defendant hereby objects to their admission upon the ground that they are irrelevant, immaterial and incompetent, defendant hereby stating that its position in this behalf is that the said services rendered by plaintiff's attorneys in the defense of such action were not rendered for the purpose of securing a release of the attachment levied by the plaintiff in the attachment suits, but for the purpose of defeating the claims asserted by said plaintiff in this complaint in said action, and for the purpose of establishing the counterclaims asserted by the defendant in its answer in said action. [29]

Dated: San Francisco, April 17, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.
REDMAN & ALEXANDER,
Attorneys for Defendant.'

"I will ask leave to file that stipulation, and a similar stipulation in the case of the Globe Company, the amount in that case being $10,000, and not $15,000."

The stipulation referred to by Mr. Sutro and entered into by the Globe Indemnity Company reads as follows:

(Title of Court and Cause.)

"It is hereby stipulated by and between the respective parties to the above-entitled action that the sum of Ten Thousand Dollars ($10,000) is the reasonable value of the services rendered subsequent on the 28th day of December, 1920, by Messrs. Pillsbury, Madison & Sutro, as attorneys for plaintiff, in defending the original action No. 16,452, referred to in the complaint herein, and consolidated action No. 16,430, in so far as the same relates to said original action No. 16,452.

Defendant makes this stipulation subject to the reservation that it shall not be construed as an admission by defendant that the facts stipulated to are admissible in evidence in this case, and defendant hereby objects to their admission upon the ground that they are irrelevant, immaterial and incompetent, defendant hereby stating that its position in this behalf is that the said services rendered by plaintiff's attorneys in the defense of such action were not rendered for the purpose of securing a release of the attachment levied by the plaintiff in the attachment suit, but for the purpose of defeating the claims asserted by said plaintiff in its complaint in said action and for the purpose of establishing the counterclaims asserted by the defendant in its answer in said action.

Dated: San Francisco, April 17, 1923. [30]

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.
HARTLEY F. PEART,
Attorney for Defendant."

Both of the foregoing stipulations were duly filed in open court with the clerk of said court.

Mr. SUTRO (Continuing).—"I would now, if your Honor please, like to offer the Marshal's return on attachment in each of these two cases. These are certified copies, if you care to see them.

Mr. REDMAN.—Yes, I would like to see them. (After examination.) We have no objection. No objection.

The COURT.—They will be admitted."

The documents were marked Plaintiff's Exhibits Nos. 1 and 2.

Plaintiff's Exhibit No. 1 is as follows:

Plaintiff's Exhibit No. 1.

"UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,
Northern District of California,—ss.

I, J. B. Holohan, United States Marshal for the Northern District of California, do hereby certify and return that I received the hereunto annexed writ of attachment on the 7th day of December, 1920, and by virtue thereof I have attached all moneys, goods, credits, effects, debts due or owing, or any personal property in the possession or under the control of Wells Fargo Nevada National Bank, San Francisco, California, belonging to the above-named defendants, Java Cocoanut Oil Company, Ltd., a corporation, or Oliefabrieken Insulinde, N. V., a corporation, or either of them, or owned by them or either of them in their possession or in their pos-

session as trustee, or as agent, or under their control as trustee or as agent, for said defendants, or either of them, or for the Nederlandsche Handel Maatschappij, and any and all warehouse receipts, bills of lading, or negotiable or non-negotiable evidences of title to copra cake, copra cake meal, or copra cake oil, or any other personal property now in your possession belonging to said defendants or either of them, or in your possession as trustee or as agent for said defendants or either of them, or in your possession or custody as trustee or as agent for the Nederlandsche Handel Maatschappij; said attachment being made by handing to and leaving with R. L. Cofer, Vice-president of Wells Fargo Nevada National Bank, personally, at San Francisco, a copy of this Writ on December 7, 1920. I also notified said Bank not to pay over or transfer the same to anyone but myself. I also required from said Bank a statement in writing of the amount of the same, to which notice I have received no reply.

Dated: San Francisco, California, December 24, 1920. [31]

J. B. HOLOHAN,

United States Marshal Northern District of California.

By H. Maguire,
Salaried Deputy.

UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,
Northern District of California,—ss.

I, J. B. Holohan, United States Marshal for the Northern District of California, do hereby certify and return that I received the hereunto annexed writ of attachment on the 7th day of December, 1920, and by virtue thereof I have duly attached all moneys, goods, credits, effects, debts due or owing, or any other personal property belonging to the defendants therein named, or either of them, in the possession or under the control of the Pacific Oil and Lead Company of San Francisco, California, by handing to and leaving with R. R. Strange, manager of said company, personally, in the city and county of San Francisco, California, on the 20th day of December, 1920, a copy of said writ of attachment with a notice in writing indorsed thereon that said property was attached by virtue of said writ and not to pay over the same to anyone but myself. I also demanded a statement in writing of the same to which I received the following answer:

PACIFIC OIL AND LEAD WORKS,
155 Townsend Street,
San Francisco.

Dec. 22, 1920.

Mr. J. B. Holohan, U. S. Marshal,
Post Office Building,
San Francisco, Cal.

Dear Sir:

We were served yesterday with a Writ of Attachment in the case of Warren R. Porter vs. Java Cocoanut Oil Co. We beg to advise that we have no monies, goods, credits, effects or debts or any personal property of any kind or nature belonging to the Java Cocoanut Oil Company, Ltd., or the Oliefabrieken Insulinde, N. V. in our possession.

Very truly yours,

_____,

Manager.

RRS/MED.

I further return that a bond having been given for the release of this attachment by the defendant Java Cocoanut Oil Company., Ltd., I released said attachment accordingly.

Dated: San Francisco, California, December 24, 1920.

J. B. HOLOHAN,
United States Marshal, Northern District of California.

By H. Maguire,
Salaried Deputy. [32]

PACIFIC OIL AND LEAD WORKS,
San Francisco—Los Angeles,
155 Townsend Street.
San Francisco, Dec. 22, 1920.

Mr. J. B. O'Holohan, U. S. Marshal,
Post Office Building,
San Francisco, Cal.

Dear Sir:

We were served yesterday with a Writ of Attachment in the case of Warren R. Porter vs. Java Cocoanut Oil Co.

We beg to advise that we have no monies, goods, credits, effects or debts or any personal property of any kind or nature belonging to the Java Cocoanut Oil Company, Ltd. or the Oliefabricken Insulinde, N. V. in our possession.

Very truly yours,

_____,
Manager.

RRS/MED.

UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,
Northern District of California,—ss.

I, J. B. Holohan, United States Marshal for the Northern District of California, do hereby certify and return that I received the hereunto annexed writ of attachment on the 7th day of December, 1920, and by virtue thereof I have duly attached all moneys, goods, credits, effects, debts due or owing, or any other personal property belonging to the de-

fendants therein named, or either of them, in the possession or under the control of the Frenzel-Payne Company of San Francisco, California, by handing to and leaving with H. S. Kinsell, secretary and treasurer of said company, personally, in the city and county of San Francisco, California, on the 20th day of December, 1920, a copy of said writ of attachment with a notice in writing indorsed thereon that said property was attached by virtue of said writ and not to pay over the same to anyone but myself. I also demanded a statement in writing of the same to which I received the following answer:

FRENZEL–PAYNE COMPANY,
311 California Street,
San Francisco, Calif.

Dec. 22, 1920.

Mr. J. B. Holohan,
United States Marshal,
Northern District of Calif.,
San Francisco, Calif.

Sir:

In accordance with conditions of writ of attachment filed on property belonging to the Java Cocoanut Oil Co., Ltd., in connection with suit against them by Warren R. Porter, as the Porter Trading Co., San Francisco, this will confirm that we have on hand at the present time, and had on hand at the time notice of attachment was handed us, approximately 19224 bags of net weight of 100 pounds each, containing Copra Meal. This represents a

total of 961.2 tons of 2000 lbs. each. No withdrawals or deliveries have been made by us to or no order *order* [33] of the Java Cocoanut Oil Co., Ltd., since Dec. 20, 1920, against this material unpaid storage and milling charges due us amount to $675.64.

We have no other moneys, goods, credits, effects, debts due or owing them, or personal property, in our possession belonging to the Java Cocoanut Oil Co., Ltd., or to the Oliefabrieken Insulinde N. V.

Very truly yours,
FRENZEL PAYNE CO.,
E. A. FRENZEL,
President.

I further return that a bond having been given for the release of this attachment by the defendant Java Cocoanut Oil Company, Ltd., I released said attachment accordingly.

Dated: San Francisco, California, December 24, 1920.

J. B. HOLOHAN,
United States Marshal, Northern District of California.

By H. Maguire,
Salaried Deputy.

FRENZEL–PAYNE COMPANY,
INCORPORATED,
311 California Street.
Phone Kearny 459.

Import
Export
Commission.

San Francisco, Calif., Dec. 22, 1920.
Writ of Attachment.
Java Cocoanut Oil Co., Ltd.,
Materials on Hand.

Mr. J. B. Holohan,
United States Marshal,
Northern District of Calif.,
San Francisco, Cal.

Sir:

In accordance with conditions of writ of attachment filed on property belonging to the Java Cocoanut Oil Co., Ltd., in connection with suit against them by Warren R. Porter, as the Porter Trading Co., San Francisco, this will confirm that we have on hand at the present time, and had on hand at the time notice of attachment was handed us, approximately 19224 bags of net weight of 100 pounds each, containing Copra Meal. This represents a total of 961.2 tons of 2000 lbs. each. No withdrawals or deliveries have been made by us to or on order of the Java Cocoanut Oil Co., Ltd., since Dec. 20, 1920. Against this material unpaid storage and milling charges due us amount to $675.64.

We have no other moneys, goods, credits, effects,

debts due or owing them, or personal property, in our possession belonging to the Java Cocoanut Oil Co., Ltd., or to the Oliefabrieken Insulinde N. V.

Very truly yours,
FRENZEL PAYNE CO.,
By E. A. FRENZEL,
President. [34]

UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,
Northern District of California,—ss.

I, J. B. Holohan, United States Marshal for the Northern District of California, do hereby certify and return that I received the hereunto annexed writ of attachment on the 7th day of December, 1920, and by virtue thereof I have duly attached all moneys, goods, credits, effects, debts due or owing, or any other personal property belonging to the defendants therein named, or either of them, in the possession or under the control of The Consolidated Milling Company, of San Francisco, California, by handing to and leaving with James W. Means, partner of said company, personally, in the city and county of San Francisco, California, on the 20th day of December, 1920, a copy of said writ of attachment, with a notice in writing indorsed thereon that said property was attached by virtue of said writ and not to pay over the same to anyone but myself. I also demanded a statement in writing of the amount of the same to which I received no reply.

I further return that a bond having been given for the release of this attachment by the defendant Java Cocoanut Oil Company, Ltd., I released said attachment accordingly.

Dated: December 24, 1920, at San Francisco, Cal.

J. B. HOLOHAN,

United States Marshal Northern District of California.

By H. Maguire,
Salaried Deputy.

NOLAN MILL & FEED CO., INC.,
Dealers in
Rice and Soya Bean Flour and By-Products.
631 Brannan Street.
San Francisco, December 23, 1920.

J. B. Holohan,
United States Marshal,
Northern District of California.

Dear Sir:

You will please take notice that we are not in possession of any money, goods, credits or effects belonging to the Java Cocoanut Oil Co., Ltd., or to Oliefabrieken Insulinde, N. V. nor have we any debts due or owing them.

NOLAN MILL & FEED CO.
H. J. Schaeffle,
Secty. [35]

UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,
Northern District of California,—ss.

I, J. B. Holohan, United States Marshal for the Northern District of California, do hereby certify and return that I received the hereunto annexed writ of attachment on the 7th day of December, 1920, and by virtue thereof I have duly attached all moneys, goods, credits, effects, debts due or owing, or any other personal property belonging to the defendants therein named, or either of them, in the possession or under the control of the Golden Gate Milling Co., of San Francisco, California, by handing to and leaving with C. C. Peterson, treasurer of said company, personally, in the city and county of San Francisco, California, on the 20th day of December, 1920, a copy of said writ of attachment, with a notice in writing indorsed thereon that said property was attached by virtue of said writ and not to pay over the same to anyone but myself. I also demanded a statement in writing of the amount of the same to which I received a letter from the San Francisco Milling Co., Inc., reading as follows:

San Francisco, Cal. Dec. 24, 1920.

United States Marshal,
Post Office Bldg., S. F.

Dear Sir:

In reference to notice of attachment, heretofore served, we wish to inform you that we have no

money, goods, credits, effects or debts, due or owing, or any personal property, in our possession or under our control, belonging to Oliefabrieken Insulinde, N. V., and that we have no money, goods, credits, effects or debts, due or owing, in our possession or under our control, belonging to Java Cocoanut Oil Co., Ltd., other than 717 tons of copra cake meal belonging to Java Cocoanut Oil Co. Ltd.

Yours truly,

SAN FRANCISCO MILLING CO., Ltd.

S. STEVENTON,

Sec.

SS:M.

I further return that a bond having been given for the release of this attachment by the defendant Java Cocoanut Oil Company, Ltd., I released said attachment accordingly.

Dated: San Francisco, California, December 24, 1920.

J. B. HOLOHAN,

United States Marshal Northern District of California.

By H. Maguire,

Salaried Deputy.

SAN FRANCISCO MILLING CO., INC.
Our Specialties:
Liberty Brand Flour.
Chicken Rolled Barley.
Rolled Oats, Ground Barley, Egyptian Corn, Milo Maize and All Feeds.

San Francisco, Cal., Dec. 24, 1920.

United States Marshal,
Post Office Bldg., S. F.

Dear Sir:

In reference to notice of attachment, heretofore served, we wish to inform you that we have no money, goods, credits, effects or debts, due or owing, or any personal property, in our possession or under our control, belonging to Oliefabrieken [36] Insulinde, N. V., and that we have no money, goods, credits, effects or debts, due or owing, in our possession or under our control, belonging to Java Cocoanut Oil Co., Ltd., other than 717 tons of copra cake meal belonging to Java Cocoanut Oil Co., Ltd.

Yours truly,
SAN FRANCISCO MILLING CO., Ltd.
S. STEVENTON,
Sec.

SS:M.

UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,
Northern District of California,—ss.

I, J. B. Holohan, United States Marshal for the

Northern District of California, do hereby certify and return that I received the hereunto annexed writ of attachment on the 7th day of December, 1920, and by virtue thereof I have duly attached all moneys, goods, effects, debts due or owing, or any other personal property belonging to the defendants therein named, or either of them, in the possession or under the control of the Associated Terminals Company of San Francisco, California, by handing to and leaving with D. Chidester, manager and acting secretary of said corporation, personally, in the city and county of San Francisco, California, on the 18th day of December, 1920, a copy of said writ of attachment, with a notice in writing indorsed thereon that said property was attached by virtue of said writ and not to pay over the same to anyone but myself. I also demanded a statement in writing of the same to which I received the following answer:

ASSOCIATED TERMINALS CO.
San Francisco, Dec. 22, 1920.

Mr. J. B. Holohan, U. S. Marshal,
Northern District of California,
7th and Mission Sts.,
San Francisco, Cal.
File 1237–374–632.

Sir:

In regard to the writ of attachment in the action of Warren R. Porter, doing business under the name and style Porter Trading Co., Plaintiff, vs. Java Cocoanut Oil Company, Ltd., a corporation,

and Oliefabrieken Insulinde, N. V., a corporation, Defendant, you are hereby notified that we have no moneys, goods, credits, effects or debts due or owing, or any personal property in our possession or under our control belonging to the Defendant, under the above-entitled action.

Yours truly,

ASSOCIATED TERMINALS COMPANY.

Per W. E. KROPP,

Auditor.

WEK/AW.

I further return that a bond having been given for the release of this attachment by the defendant Java Cocoanut Oil Company, Ltd., I released said attachment accordingly.

Dated: San Francisco, California, December 24, 1920.

J. B. HOLOHAN,

United States Marshal Northern District of California.

By I. W. Grover,

Salaried Deputy. [37]

ASSOCIATED TERMINALS CO.
San Francisco—Sacramento.
San Francisco, Dec. 22, 1920.

Mr. J. B. Holohan, U. S. Marshal,
Northern District of California,
7th and Mission Sts.,
San Francisco, Cal.
File 1237–374–632.

Sir:

In regard to the writ of attachment in the action of Warren R. Porter, doing business under the name and style Porter Trading Co., Plaintiff, vs. Java Cocoanut Oil Company, Ltd., a corporation, and Oliefabrieken Insulinde, N. V., a corporation, Defendant, you are hereby notified that we have no moneys, goods, credits, effects or debts due or owing, or any personal property in our possession or under our control belonging to the Defendant, under the above-entitled action.

Yours truly,
ASSOCIATED TERMINALS COMPANY.
Per W. E. KROPP,
Auditor.

WEK/AW.

UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,
Northern District of California,—ss.

I, J. B. Holohan, United States Marshal for the Northern District of California, do hereby certify

and return that I received the hereunto annexed writ of attachment on the 7th day of December, 1920, and by virtue thereof I have duly attached all moneys, goods, credits, effects, debts due or owing, or any other personal property belonging to the defendants therein named, or either of them, in the possession or under the control of George Beanston, of San Francisco, California, personally, on the 20th day of December, 1920, a copy of said writ of attachment, with a notice in writing indorsed thereon that said property was attached by virtue of said writ and not to pay over the same to anyone but myself. I also demanded a statement in writing of the amount of the same to which I received no reply.

I further return that a bond having been given for the release of this attachment by the defendant Java Cocoanut Oil Company, Ltd., I released said attachment accordingly.

Dated: December 24, 1920, at San Francisco, Cal.

J. B. HOLOHAN,

United States Marshal Northern District of California.

By H. Maguire,

Salaried Deputy. [38]

UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,

Northern District of California,—ss.

I, J. B. Holohan, United States Marshal for the Northern District of California, do hereby certify

and return that I received the hereunto annexed writ of attachment on the 7th day of December, 1920, and by virtue thereof I have duly attached all moneys, goods, effects, debts due or owing, or any other personal property belonging to the defendants therein named, or either of them, in the possession or under the control of the Wells Fargo Nevada National Bank of San Francisco, California, by handing to and leaving with L. R. Cofer, vice-president of said bank, personally, in the city and county of San Francisco, California, on the 18th day of December, 1920, a copy of said writ of attachment, with a notice in writing indorsed thereon that said property was attached by virtue of said writ and not to pay over the same to anyone but myself. I also demanded a statement in writing of the same to which I received the following answer:

'WELLS FARGO NEVADA NATIONAL BANK,
Of San Francisco.

San Francisco, December 18, 1920.

Mr. J. B. Holohan, United States Marshal,
Northern District of California,
San Francisco.

Dear Sir:

This will acknowledge your Writ of Attachment, —Warren R. Porter, vs. Java Cocoanut Oil Company, Ltd., a corporation, and Oliefabrieken Insulinde, N. V.

All property of the Java Cocoanut Oil Company, Ltd., in our possession, has been pledged to us on

account of monies advanced to said company, greater than the value of all securities in our hands.

We have on our books a credit balance of the Oliefabrieken Insulinde, of $540.85, but as said Oliefabrieken Insulinde are guarantors to us for the liabilities of the Java Cocoanut Oil Company, Ltd., we look upon this balance as being pledged also on account of their liability to us.

Sincerely yours,

L. R. COFER,
Vice-president.

LRC: JBW.

I further return that a bond having been given for the release of this attachment by the defendant Java Cocoanut Oil Company, Ltd., I released said attachment accordingly.

Dated: San Francisco, California, December 24, 1920.

J. B. HOLOHAN,
United States Marshal Northern District of California.

By I. W. Grover,
Salaried Deputy. [39]

WELLS FARGO NEVADA NATIONAL BANK
of San Francisco.
Established 1852.

San Francisco December 18, 1920.

Mr. J. B. Holohan, United States Marshal,
Northern District of California,
San Francisco.

Dear Sir:

This will acknowledge your Writ of Attachment, —Warren R. Porter vs. Java Cocoanut Oil Company, Ltd., a corporation, and Oliefabrieken Insulinde, N. V.

All property of the Java Cocoanut Oil Company, Ltd., in our possession, has been pledged to us on account of monies advanced to said company, greater than the value of all securities in our hands.

We have on our books a credit balance of the Oliefabrieken Insulinde, of $540.85, but as said Oliefabrieken Insulinde are guarantors to us for the liabilities of the Java-Cocoanut Oil Company, Ltd., we look upon this balance as being pledged also on account of their liability to us.

Sincerely yours,
L. R. COFER,
Vice-president.

LRC: JBW.

UNITED STATES OF AMERICA,
Northern District of California.

In the District Court of the United States for the Northern District of California, Second Division.

WARREN R. PORTER, Doing Business Under the Name and Style of PORTER TRADING COMPANY,

Plaintiff,

vs.

JAVA COCOANUT OIL COMPANY, LTD. a Corporation, and OLIENFABRIEKEN INSULINDE, N. V., a Corporation,

Defendants.

WRIT OF ATTACHMENT.

The President of the United States of America, To the Marshal of the Northren District of California, GREETING:

WHEREAS, the above-entitled action was commenced in the District Court of the United States for the Northern District of California, by the above-named plaintiff to recover from the said defendants the sum of $143,566.25 or thereabouts, besides interest and cost of suit, and the necessary affidavit and undertaking herein having been filed as required by law:

Now, we do therefore command you, the said Marshal, that you attach and safely keep all the property of the said Defendants or either of them, within

your said District (not exempt from execution), or so much thereof as may be sufficient to satisfy the said Plaintiff's demand, as above-mentioned; unless the said defendants give you security, by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking, and hereof make due and legal service and return.

Witness, the Honorable WILLIAM C. VAN FLEET, Judge of the District Court of the United States, Northern [40] District of California, this 7th day of December in the year of our Lord one thousand nine hundred and twenty and of our Independence the 145th.

[Seal] WALTER B. MALING,
Clerk.
By J. A. Schaertzer,
Deputy Clerk.

Rec'd at U. S. Marshal's Office, San Francisco, Dec. 7, 1920 at 11:30 A. M.

J. B. HOLOHAN,
U. S. Marshal,
By Geo. H. Burnham,
Ch. Salaried Deputy.

[Endorsed]: Filed Jan. 4, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

WARREN S. PORTER, etc.,

vs.

JAVA COCOANUT OIL CO. LTD. et al.

No. 16430.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of the original Writ of Attachment together with the Marshal's Returns attached thereto filed January 4, 1921, in the above-entitled cause, as the same remains of record and on file in the office of the Clerk of said Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 21st day of April A. D. 1923.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: No. 16430. Warren R. Porter vs. Java Cocoanut Oil Co. Ltd. Marshal's Return on Attachment. Certified Copy. No. 16715 & 16716. U. S. District Court, Nor. Dist. Calif. Plff. Exhibit 1. Filed 4/25/23. Maling, Clerk."

Plaintiff's Exhibit No. 2 is as follows:

Plaintiff's Exhibit No. 2.

"UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,
Northern District of California,—ss.

I, J. B. Holohan, United States Marshal of the Northern District of California, do hereby certify and return that I received the hereunto annexed writ of attachment on the 28th day of December, 1920, and by virtue thereof I have duly attached all moneys, goods, credits, effects, debts due or owing, or any personal property, belonging to the defendants therein named, or either of them, in the possession or under the control of Frenzel-Payne Company, by delivering to and leaving with E. A. Frenzel, President of said Frenzel-Payne Company, personally, in the City and County of San Francisco, State of California, on the 28th day of December, 1920, a copy of said writ of attachment [41] with a notice in writing indorsed thereon that such property was attached by virtue of said writ, and not to pay over or transfer the same to anyone but myself. I also demanded a statement in writing of the amount of the same, to which I received the following answer:

FRENZEL–PAYNE COMPANY.
San Francisco, Calif., Dec. 28, 1920.
Writ of Attachment.
Java Cocoanut Oil Co., Ltd.
No. 16452—$27,500.00

Mr. J. B. Holohan,
United States Marshal,
Northern District of California,
San Francisco Cal.,

Sir:

In accordance with writ of attachment in case of Warren R. Porter vs. Java Cocoanut Oil Co., Ltd. No. 16452, this to advise that we have on hand at the present time, which is to the best of our knowledge and belief the property of the Java Cocoanut Oil Co., Ltd., 19221 bags of net weight of 100# each, containing copra meal. This represents a total of 961.05 tons of 2000# per ton.

Against this material we have unpaid storage and milling charges due us amounting to $675.64.

We have no other moneys, goods, credits, effects, debts due or owing them, or personal property, in our possession belonging to the Java Cocoanut Oil Co., Ltd., or to the Oliefabriken Insulinde, N. V.

Very truly yours,
FRENZEL PAYNE CO.,
E. A. FRENZEL,
President.

I further return that a bond having been given by the defendant on the 30th day of December, 1920

for the release of the above attachment, I have released the same accordingly.

J. B. HOLOHAN,
U. S. Marshal.
By G. O. White,
Deputy.

(Letter-head.)

FRENZEL–PAYNE COMPANY,
INCORPORATED.
311 California Street.
Phone Kearny 459.

San Francisco, Calif., Dec. 28, 1920.

Writ of Attachment.
Java Cocoanut Oil Co., Ltd.,
No. 16452—$27,500.00

Mr. J. B. Holohan,
United States Marshal,
Northern District of Calif.,
San Francisco, Cal.,

Sir:

In accordance with writ of attachment in case of Warren R. Porter vs. Java Cocoanut Oil Co., Ltd., No. 16452, this to advise that we have on hand at the present time, which is to the best of our knowledge and belief the property of the [42] Java Cocoanut Oil Co., Ltd., 19221 bags of net weight of 100# each, containing copra meal. This represents a total of 961.05 tons of 2000# per ton.

Against this material we have unpaid storage and milling charges due us amounting to $675.64.

We have no other moneys, goods, credits, effects, debts due or owing them, or personal property, in our possession belonging to the Java Cocoanut Oil Co., Ltd., or to the Oliefabriken Insulinde N. V.

Very truly yours,
FRENZEL PAYNE CO.,
E. A. FRENZEL,
President.

UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,
Northern District of California,—ss.

I, J. B. Holohan, United States Marshal of the Northern District of California, do hereby certify and return that I received the hereunto annexed writ of attachment on the 28th day of December, 1920, and by virtue thereof I have duly attached all moneys, goods, credits, effects, debts due or owing or any personal property, all bills of lading, warehouse certificates, trust receipts, certificates of deposit, certified checks of any negotiable or non-negotiable evidence of title, copra cake, copra cake meal, cocoanut oil, and any and all documents showing and or giving title to said defendants, Java Cocoanut Oil Company, Ltd., a corporation, and Oliefabrieken Insulinde, N. V., a corporation, or either of them to any personal property whether in the name of said defendants or either of them or in the name of Nederlandsche Handel Maatschappij, or in the name of the Wells Fargo Nevada National Bank, or in the name of said Nederland-

sche Handel Maatschapij, as trustees, belonging to the defendants therein named, or either of them, in the possession or under the control of Wells Fargo Nevada National Bank, by delivering to and leaving with L. R. Cofer, Vice President of said Wells Fargo Nevada National Bank, personally, in the city and county of San Francisco, State of California, on the 28th day of December, 1920, a copy of said writ of attachment with an notice in writing indorsed thereon that such property was attached by virtue of said writ, and not to pay over or transfer the same to anyone but myself. I also demanded a statement in writing of the amount of the same, to which said Wells Fargo National Bank has failed, neglected and refused to answer.

I further return that a bond having been given by the defendant on the 30th day of December, 1920, for the release of the above attachment, I have released the same accordingly.

J. B. HOLOHAN,
Marshal.
By G. O. White
Deputy.

UNITED STATES MARSHAL'S RETURN ON ATTACHMENT.

United States Marshal's Office,
Northern District of California,—ss.

I, J. B. Holohan, United States Marshal of the Northern District of California, do hereby certify and return that I received the hereunto annexed

writ of attachment on the 28th day of December, 1920, and by virtue thereof I have duly attached all moneys, goods, credits, effects, debts due or owing, or any personal property, belonging to the defendants therein named, or either of them, in the possession or under the control of San [43] Francisco Milling Company, by delivering to and leaving with C. C. Peterson, Treasurer of said San Francisco Milling Company, personally, in the city and county of San Francisco, State of California, on the 28th day of December, 1920, a copy of said writ of attachment with a notice in writing indorsed thereon that such property was attached by virtue of said writ, and not to pay over or transfer the same to anyone but myself. I also demanded a statement in writing of the amount of the same, to which said San Francisco Milling Company has failed, neglected and refused to answer.

I further return that a bond having been given by the defendant on the 30th day of December, 1920, for the release of the above attachment, I have released the same accordingly.

J. B. HOLOHAN,
U. S. Marshal.
By Robert G. Anderson,
Deputy.

United States of America,
Northern District of California.

In the District Court of the United States for the Northern District of California, Second Division.

WARREN R. PORTER, etc.,

Plaintiff,

vs.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation, and OLIEFABRIEKEN INSULINDE, N. V., a Corporation,

Defendants.

WRIT OF ATTACHMENT.

The President of the United States of America, to the Marshal of the Northern District of California, GREETING:

WHEREAS, the above-entitled action was commenced in the District Court of the United States for the Northern District of California, by the above-named plaintiff to recover from the said defendant the sum of $27,500.00 or thereabouts, besides interest and cost of suit, and the necessary affidavit and undertaking herein having been filed as required by law:

NOW, we do therefore command you, the said Marshal, that you attach and safely keep all the property of the said defendants or either of them, within your said District (not exempt from execution), or so much thereof as may be sufficient to satisfy the said plaintiff's demand, as above men-

tioned; unless the said defendants give you security, by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking, and hereof make due and legal service and return.

WITNESS, the Honorable WILLIAM C. VAN FLEET, Judge of the District Court of the United States, Northern District of California, this 28th day of December, in the year of our Lord one thousand nine hundred and twenty, and of our Independence the 145th.

[Seal] WALTER B. MALING,
Clerk.
By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Received at U. S. Marshal's Office December 28/20, at 3:30 P. M. J. B. Holohan, U. S. Marshal. By Geo. H. Burnham, Ch. Salaried Deputy. [44]

No. 16,452.

WARREN R. PORTER, etc.,
vs.
JAVA COCOANUT OIL CO., LTD. et al.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

I Walter B. Maling, Clerk of the United States

District Court for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of the original writ of attachment together with the Marshal's returns attached thereto filed January 4, 1921, in the above-entitled cause, as the same remains of record and on file in the office of the clerk of said court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 21st day of April, A. D. 1923.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By J. A. Schaertzer,
Deputy Clerk.

Filed Jan. 4, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 16,452. Warren R. Porter vs. Java Cocoanut Oil Co., Ltd. Marshal's Return on Attachment. Certified Copy. No. 16,715 & 16,716. U. S. Dist. Court Nor. Dist. Calif. Plff. Exhibit 2. Filed 4/25/23. Maling, Clerk."

"Mr. SUTRO.—Now, if your Honor please, I would like to offer in evidence a certified copy of the order consolidating for trial the four cases which I have mentioned.

Mr. REDMAN.—No objection to that.

Mr. PEART.—No objection.

The COURT.—It will be admitted.

Mr. SUTRO.—That may be considered as being offered in each case; there is only one copy.

Mr. REDMAN.—Yes.

The COURT.—That may be understood."

The document in question, Plaintiff's Exhibit No. 3, is as follows:

Plaintiff's Exhibit No. 3.

"At a stated term, to wit, the November Term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Monday the 21st day of November, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable MAURICE T. DOOLING, District Judge. [45]

No. 16,430.

WARREN R. PORTER etc.

vs.

JAVA COCOANUT OIL CO.

No. 16,452.

WARREN R. PORTER etc.

vs.

JAVA COCOANUT OIL CO.

No. 16,498.

JAVA COCOANUT OIL CO.

vs.

WARREN R. PORTER etc.

No. 16,518.

JAVA COCOANUT OIL CO.

vs.

WARREN R. PORTER etc.

Ordered that the four above-entitled actions be and they are hereby consolidated under the title of Warren R. Porter, doing business under the name and style of Porter Trading Company, Plaintiff, versus Java Cocoanut Oil Co., Ltd., a corporation, Defendant No. 16,430.

[Endorsed]: I hereby certify that the foregoing is a full, true and correct copy of an Original Order made and entered in the therein entitled cause.

ATTEST my hand and the seal of said District Court this 24th day of April A. D. 1923.

[Seal] WALTER B. MALING,
Clerk.
By J. A. Schaertzer,
Deputy Clerk."

Mr. SUTRO.—I think I had better be sworn.

Testimony of Alfred Sutro, for Plaintiff.

ALFRED SUTRO, a witness on behalf of the plaintiff, was called and being duly sworn, testified as follows:

"In the four actions that were pending in this Court between Porter and the Java Cocoanut Oil Company there were involved five contracts for the purchase by Porter from the Java Cocoanut Oil Company of copra cake. I have here duplicate

(Testimony of Alfred Sutro.)

copies of the five contracts. I would like to offer them in evidence.

I will state, your Honor, the purpose of it is, it is denied in the answer, here, that these actions, which were consolidated for trial by his Honor, Judge Dooling, arose out of the same transaction, and I am offering these contracts." [46]

"The COURT.—I think that is foreclosed by the order of consolidation. We will never go back of that order.

A. If that is your Honor's view I do not care to offer them at all. That was our view.

The COURT.—It cannot be questioned here.

A. I will say that on September 3, 1921, the Java Cocoanut Oil Company paid my firm for services in the litigation between Porter and itself arising out of the transactions involved in the four complaints the sum of $4000; on December 10, 1921, the further sum of $10,000 for the same services; on January 16, 1922, the sum of $15,000; those three sums aggregate altogether the sum of $29,000. That is all of my testimony for the present.

The COURT.—Any cross-examination?

Mr. REDMAN.—Just a minute. No cross-examination."

Testimony of E. M. Prince, for Plaintiff.

E. M. PRINCE, a witness on behalf of the plaintiff, was called and being duly sworn testified as follows:

Direct Examination by Mr. SUTRO.

I am a resident of Alameda County and by pro-

(Testimony of E. M. Prince.)

fession a lawyer. I have been admitted to the bar nearly five years and have been practicing about three. I am associated in the practice of my profession with the firm of Pillsbury, Madison, & Sutro, and have been for nearly three years. This was my first association. Mr. Alfred Sutro, yourself, on behalf of the firm of Pillsbury, Madison & Sutro, had charge of the litigation on behalf of the Java Cocoanut Oil Company, between that Company and Warren R. Porter, arising out of the purchase by Porter of certain copra cake from the Java Cocoanut Oil Company. From the beginning I assisted you in that litigation and took an active part in everything that was done in it. I also assisted in the trial from beginning to end. [47]

"Mr. SUTRO.—I had prepared a number of questions to show the fact that these actions arose out of the same transaction, but I understand that we need not go into that.

The COURT.—I think not.

Mr. SUTRO.—Q. Mr. Prince, in each of the two suits in which the Surety Companies we are now suing furnished bonds after attachments were levied, did you examine the attachments with me at the time to see whether or not they were regular on their face? A. I did.

Q. Were they regular, in your opinion?

A. They were.

Q. Was there any chance of defeating those attachments by moving for a dissolution?

Mr. PEART.—We object to this line of testi-

mony upon the ground that the record of the case is the best evidence of whether or not they are regular on their face.

The COURT.—I think so.

Mr. SUTRO.—I might say to your Honor that I am asking the witness as an expert witness, as an attorney.

The COURT.—Well, the Court—

Mr. SUTRO.—Would your Honor indulge me a moment? This will not be long.

The COURT.—I know, but does the Court ever take the testimony of expert lawyers on what the law is. It may on foreign law, but I doubt it on such matters as this. Your documents are here before us. Whether there are any facts that would warrant their dissolution would either depend on the documents, themselves, or on some extraneous matter of fact.

Mr. SUTRO.—We won't go into it, then.

The COURT.—Proceed. I hardly see the necessity of it.

Mr. SUTRO.—We are doing it out of an abundance of caution. We offer the attachments so as to overcome the suggestion which might be made by them that they could have been dissolved. We want to show your Honor that we have carefully [48] considered that, and they could not be dissolved.

The COURT.—He may answer briefly; in so far as it is not competent, the Court will not, in its opinion, give it any consideration, or in so far as not material.

Mr. SUTRO.—Q. Answer the question. Read it, Mr. Reporter.

(Last question repeated by the reporter.)

A. In our opinion there was no chance.

Q. Was there any way of getting rid of these attachments, except by defending the case? [49]

A. In our opinion, there was no way except by defending the suits."

The WITNESS (Continuing).—The amount of costs awarded to Java Cocoanut Oil Company, Ltd., in action No. 16,430 was $1591.64. That amount has not been paid by the Fidelity Company to the plaintiff. In the case against the Globe Company the amount of costs is $869.19 [50] and that amount has not been paid by the Globe Company.

Mr. SUTRO.—You may cross-examine.

Mr. PEART.—No cross-examination.

Mr. REDMAN.—No cross-examination.

Testimony of Alfred Sutro, for Plaintiff.

Mr. SUTRO.—I would like to state, if your Honor please, as a part of my testimony, the facts set up in paragraph III of the second cause of action of the Fidelity Suit, as follows:

"For the services of my firm in the original case, 16,430, and consolidated action No. 16,430, plaintiff paid my firm sums in excess of $25,000, of which the sum of $15,000 was paid for services that the firm rendered plaintiff subsequent to the issuance of the attachment, and to secure the dissolution thereof; that is to say, that plaintiff paid the sum of $15,000 to my firm for services rendered by my firm subsequent to the 6th day of December, 1920, in defend-

(Testimony of Alfred Sutro.)

ing original action No. 16,430, and consolidated action No. 16,430, in so far as the same related to the original action 16,430.

The COURT.—Do I understand you are reading from the complaint?

A. I am stating these facts as alleged. That no part of the sum of $15,000 was paid my firm for services in or in connection with action No. 16,452, 16,498 and 16,518, or any thereof, or for services in consolidated action 16,430 relating to the last three actions, or any thereof; that no part of that sum has been paid by the defendant Fidelity Company to plaintiff.

May it be stipulated that I make the same statement with reference to the Globe Company, so far as $10,000 is concerned?

Mr. PEART.—Yes.

The WITNESS.—That is all." [51]

Cross-examination.

"By Mr. PEART.—Q. Mr. Sutro, the amount that you have specified aggregates the sum of $25,000?

A. To which amount have you reference?

Q. The amounts paid you for services in securing the dissolution of the two attachments.

A. I specified the sum of $15,000 as the amount paid my firm by the plaintiff in the case of the Fidelity & Deposit Company for defending action 16,430 after the levy of the attachment, and securing the dissolution thereof, as stated in my testimony; and the same statement by sipulation with

you is made so far as the Globe Company is concerned, except the sum of $10,000 is the amount paid, and the action is 16,452 and not 16,430.

Q. The plaintiff paid you in all for this litigation, for services in the litigation, in the four cases, the sum of $29,000, I think your testimony is?

A. No.

Q. Pardon me. The sum of $4,000, September 3, 1921, the sum of $10,000 December 10, 1921, and the sum of $15,000 on January 16, 1922?

A. Yes.

Q. When did the plaintiff, the Java Cocoanut Oil Company, first consult you, Mr. Sutro, in reference to any matters in dispute between that company and Mr. Porter?

A. My recollection is that it was sometime in August, 1920—I could fix the date absolutely by reference to a jury trial which I had in this court, his Honor Judge Van Fleet, I think, presiding, and it was when I came out of court that day, I believe it was in August, 1920, that Mr. Clements, on behalf of the plaintiff, came to see me and told me of the difficulties that he was having with Mr. Porter.

Q. Did the Java Cocoanut Oil Company at that time discuss with you claims which it asserted against Porter? A. It certainly did.

Q. And those claims aggregated substantially the amount of the judgment that the Java Cocoanut Oil Company finally recovered against Porter in the consolidated action No. 16,430?

(Testimony of Alfred Sutro.)

A. They did not. [52]

Q. Were they in excess of that sum?

A. They nowhere approached that sum.

Q. What amount was the Java Cocoanut Oil Company claiming against Porter at the time they first consulted you?

A. That would be impossible for me to tell you. I can state this, however, that will give you some idea, that after Mr. Porter filed his first complaint, which was action 16,430, and which was brought to recover damages for an alleged breach of contract or contracts on the part of the Java Company, the Java Company filed an answer and cross-complaint, counterclaims and cross-complaint, the counterclaims and cross-complaint being, as far as I now remember, practically identical, except one was styled a cross-complaint and the other a counterclaim; and in that counterclaim the Java Company was suing Porter for, I think, a little over $189,000 for cake which it had delivered to Porter and for which he had not paid.

Q. Had the cake been delivered to Porter prior to the time that the Java Company first consulted with you? A. Some of the cake had been.

Q. Were there deliveries of cake subsequent to the time that the Java Cocoanut Oil Company consulted you?

A. I could tell you with a good deal of absolute accuracy by reference to a photographic copy of a chart which was 30 feet long and about 6 feet high, which we had made, and which showed all

of these transactions. If you want to get at the facts and let me refer to that chart—read that question. (Last question repeated by the reporter.) Do you want to see this?

Q. No, just refresh your recollection from the chart, Mr. Sutro.

A. Before answering your question, do you want to see it, I am asking you?

Q. No.

Mr. PEART.—Q. Mr. Sutro, how often did you have conferences with any representative of the Java Cocoanut Oil Company prior to the institution of any litigation between that company and [53] Porter?

A. That would be hard to answer, Mr. Peart. My recollection is that very soon after Mr. Porter started his first suit Mr. Clements, president of the company, who had come out here on account of the repudiation of these contracts by Porter, left again for New York, and to tell you how many times I saw Mr. Clements would just be a guess and of no value.

Q. Were you in correspondence with him after his return to New York in regard to the matter?

A. Oh, yes.

Q. Mr. Porter had, as I understand you, repudiated certain contracts at that time existing between him and the Java Cocoanut Oil Company, at the time you were first consulted? A. Yes.

Q. And those contracts were the basis of the counterclaim and cross-complaint filed by the Java

(Testimony of Alfred Sutro.)

Cocoanut Oil Company through your firm in the four actions mentioned in this complaint involved here?

A. I will answer that question by saying that they were the basis of Mr. Porter's two complaints against us; each one of the five contracts between Porter and the Java Company was involved in the two suits in which your company and Mr. Redman's company gave the bonds; and obviously we had to file counterclaims and cross-complaints in those suits because Porter had taken the cake under those contracts and had not paid for it, and we were permitted, as you know, under the Code, to file these counterclaims, because they arose out of the same transaction.

Q. But, as a matter of fact, Mr. Clements, the president of the Java Cocoanut Oil Company, when he consulted with you in August of 1920, did so after Mr. Porter had repudiated the five contracts with the Java Cocoanut Oil Company?

A. No, not in their entirety. You understand, these contracts—these contracts provided for successive deliveries, running over a long period of time and each delivery was tendered Porter as it came into port, and as each delivery was tendered to him after Mr. Clements had consulted me, Mr. Porter refused to accept it, and each delivery was treated as a separate transaction, and that ran along for quite a long period of time. [54]

Now, if you Honor please, as counsel for myself I have not objected to these questions, I have

no desire to stop the investigation, I am perfectly willing to have all of the facts come in, but I do not see the materiality of them, because the counsel have stipulated that $15,000 in one case and $10,000 in the other case was the reasonable value of the services that we rendered in these suits after the attachments were levied. I have testified that the amounts were paid us. That is the whole issue.

The COURT.—Counsel is entitled to some latitude on cross-examination. Proceed.

Mr. PEART.—Our position is, I think, quite clear to your Honor, from what Mr. Sutro has said, that we have denied in our answer that these amounts were paid to secure a dissolution of the attachment, and I think this line of inquiry is material.

Q. When Mr. Clements left for New York, did the Java Cocoanut Oil Company have any representative here in the city? A. Yes.

Q. What was his name?

A. David Dorward, Jr.

Q. From the time that you were first employed in the case, did you have frequent conferences with him in regard to the contracts with Porter?

A. If you will eliminate in regard to contracts with Porter, I will answer I had frequent conferences with him about the Porter matter.

Q. Did you also have many conferences with Porter or his representatives?

A. No, not many, I will tell you, Mr. Peart—

Q. (Intg.) Did you have many with his counsel?

(Testimony of Alfred Sutro.)

A. No. At first we had some conferences, and I advised Mr. Clements that litigation was undesirable, it would be long and expensive, and always uncertain, and Mr. Porter and Mr. Christin—for the first time I had the pleasure of meeting Mr. Christin—met Mr. Clements and me, and it was my understanding that we had come to a definite agreement, and I was very greatly surprised that the agreement—I do not like to use the word—was repudiated, and after that there still were spasmodic attempts, as I will recall, to compromise, until [55] Porter attached in the action 16,430, and in view of his attitude in having repudiated these contracts on a steadily following market, all thought of compromise was thereafter abandoned.

Q. Mr. Christin was acting as attorney?

A. Yes. You are asking me when I had the interviews, and I explain to you.

Q. Was Mr. Porter represented by anyone other than Mr. Christin?

A. The firm of Knight, Boland, Hutchinson & Christin represented him, and of that firm there were several besides Mr. Christin who were here at the trial, and Mr. Partridge, now Judge Partridge, represented Mr. Porter, and Mr. Partridge took the laboring oar during the trial, which lasted some three weeks, and which some eighty odd witnesses, as I recall, were examined—no, I think 71, to be accurate, 23 on behalf of the plaintiff Porter, and 48 on behalf of the Java Cocoanut Oil Company, involving scientists, university professors

from Stanford and Berkeley, and so on, a jury trial.

Q. Was Judge Partridge present at the conference held before litigation commenced?

A. He was then Mr. Partridge. He had not risen to his present dignity. No, I do not recall that he was present at any conference. I think that by reason of the fact that he and I were old friends, and of very long and old standing, that I saw him personally after the agreement which I conceived had been reached had been repudiated—I saw him in an effort to bring the parties together; in fact, I would say definitely that I called on him at his office on Post Street, and then to finish up his connection so far as these compromise negotiations were concerned, I think he wrote me a letter in the form of an ultimatum, which we received and we let the ultimatum pass.

Q. Very earnest and repeated efforts were made, were there not, on behalf of yourself and counsel on the other side, to settle all differences between the Java Cocoanut Oil Company and Porter before litigation actually commenced?

A. Your question is compound; so far as the repeated part of it is concerned, that is not the fact; very earnest efforts were made, I put my heart and soul into it, and I thought we had agreed upon a compromise, as I told you, and that [56] was at a conference which consumed the greater part of an afternoon, between Mr. Christin, Mr. Porter, Mr. Clements and myself, as I have narrated to you, and that, so far as I recall, was the

only effort that was made—real long conference and earnest effort.

Q. Mr. Sutro, when was that time, if you can recall, when negotiations had apparently or did terminate and the ultimatum was given?

A. They terminated when Mr. Porter filed his first suit; but I will say I had not given up an idea that things might not be arranged, because I did not believe in litigation if it could be avoided, and we ran along until the attachment by Porter. As I stated to you, that seemed to add insult to injury; he tied up a lot of property and cake of the company here, and the company had to pay a very heavy premium to get the stuff released, stuff that it had sold Porter, and which he would not take, and which it then had to sell on a falling market. I might say for your information that the amount of cake which Porter had contracted for was probably up to nearly a million dollars, and when he first took it the market was going up, and that the quantity of it would probably take up perhaps a square block of room piled 20 or 30 feet high. This copra cake, your Honor, is very bulky, and the company had to get rid of it, and when Porter attached that cake, it made it more difficult, we had to give bond, which seemed unnecessary expense, to rid it from the attachment, so that we could sell it; the meal was tied up over at the Frenzel-Payne Mill, which had been ground from the cake, and which had been sold, and which the company was attempting to sell and was selling to farmers here and in the North-

ern part of the state, and that attachment of course, stopped everything. From then on it was a question of fight, a fight to the finish, with the result that you know.

Q. While these negotiations were in progress, were you anticipating that they might fail?

A. Why, certainly. I did not know as a foregone conclusion that I was going to compromise them. I won't [57] say that I went into it anticipating that they would fail. Anything that I go into I go into with the hope of success. That is the feeling I have in this case.

Q. Finally, you were, therefore, rendering services to the Java Cocoanut Oil Company, looking to possible litigation, even before litigation commenced?

A. That is calling for a psychological condition which I could not very well answer. I knew that if a compromise were not effected and Mr. Porter were unwilling to pay in any event something for the cake that he had received, and which amounted to practically $190,000, and which we had information that he had sold for sums in excess of $100,000, we were going to sue him, I knew that, no mistake about that. And, further than that, I will tell you unless he were willing to make some arrangement to fill on the rest of the contracts by which he had obligated himself, taking into consideration the falling market, we would try to hold him to these contracts, as we did.

Q. And you were, therefore, preparing, as all

(Testimony of Alfred Sutro.)

attorneys do, upon the facts and the law in the event that a compromise was not reached?

A. Not very extensively at that time; in fact, you might say not at all. I was making no preparations at that time, and the facts were developed *in extenso* after the end of the year 1920. I engaged two professors of the University of Stanford to conduct an experiment with a herd of 20 or 30 cows of the finest variety, lasting over a long period of months, because I wanted to know the truth. Mr. Porter claimed that this cake was infested with bugs, and that it was not merchantable; we showed that the cake which he had received before he made this contract, when the market was rising, was the same kind of cake—we had a chart here showing the shipments he had received, and on these contracts he made money—and I wanted to find out—he claimed that the cake would be bad if it were ground up into meal to feed to cattle, and I wanted to find out whether or not it would be and I employed these professors, and I employed an expert cattle man to make these experiments, and we went into this thing from the bottom up, from the ground up; we employed other experts to investigate these [58] matters. That was after your attachments were levied.

Q. After yours were levied as well? That is, by our attachments, you refer to the attachments levied by Porter?

A. Yes; certainly, they were after ours. I do not deny that; if you are asking me that question I will

(Testimony of Alfred Sutro.)

say 'certainly'; there is no evidence in connection with this whole business that I am not perfectly ready to tell you if you want it.

Q. I know that. I want to get it before his Honor. A. So far as they are material.

Q. If I gather your testimony correctly, this copra cake of the contract price of about $190,000—

A. (Intg.) That is in round figures.

Q. (Continuing.) —in round figures, had been delivered to Mr. Porter, and was not paid for by Porter to the Java Cocoanut Oil Company prior to the institution of any litigation? A. Yes.

Q. And, thereafter, succeeding shipments were arriving? A. Regularly.

Q. At what intervals, approximately?

A. Monthly.

Q. When did they terminate, approximately?

A. In January, 1921.

Q. As those shipments came in, did you take any precautions toward ascertaining their condition and quality with reference to the contracts?

A. How is that?

Q. As the shipments arrived, did you make an examination in any way in reference to the quality?

A. Yes—not any intensive examination, because I will tell you, this copra remained here unaccepted by Porter; there was such a slump in the market that we could not sell it, and I realized that we could get an examination of it at any time, practically, if it became necessary. Some of it was milled —in fact, I will tell you, for your further informa-

(Testimony of Alfred Sutro.)

tion, for, of course, the purpose of your question is obvious, that there was an amount of that stuff in the warehouse down here that Porter had contracted to take, and which he did not take, which the jury and his Honor, Judge Dooling, inspected during the course of the trial of which you are speaking; that was in December, [59] 1921; and that was cake out of a number of different ships; this copra came on different ships, it came on the 'Batoe,' the 'Bengkalis,' the 'Arakan,' the 'Tjisondari,' the 'Bali,' the 'Tjikembang,' the 'Krakatau,' the 'Bondowoso,' and the 'Tjitaroem,' and on several of them on succeeding voyages; in other words, they would make this port from Java, and then they would go back to Java and come back with another cargo to this port; I think I have given you all of them.

Q. How many attachments did the Java Cocoanut Oil Company levy on Porter?

A. I do not remember, quite a few. If you want to know exactly, I will find that out for you, I do not want to avoid the question. There were attachments levied whenever we could find that there was anything we could attach. Might I ask Mr. Prince how many there were?

Mr. PRINCE.—My memory is there were four.

A. Now you have your exact number.

Mr. PEART.—Q. And in, I think, three of the cases, if I recall the record, three of the cases mentioned in the complaint here, you filed counterclaims and cross-complaints?

A. No, I think you are mistaken about that. I think Mr. Porter began two and we began two. You know since that time there has been some water gone over the dam, and I cannot remember the details without reference to the record, but I will be glad to find out anything that you want. I think Porter began two suits, and we began two suits, and in the two suits that Porter began we filed counterclaims and cross-complaints.

Q. The record, of course, would show definitely in those cases?

A. We can tell in a minute; we can go in the clerk's office and find out.

Q. Are you willing to stipulate that the records in the four cases be introduced in evidence?

A. I won't stipulate. I think it will make an unnecessarily long record.

Q. What were the aggregate amounts that the Java Cocoanut Oil Company sued Porter for by cross-complaint or counterclaim in [60] the four cases consolidated under No. 16,430?

A. If you put your question in that way—you ask for the aggregate amount that we sued Porter for in the cross-complaints and counterclaims?

Q. Or by direct action.

A. Our verdict was for practically $495,000. The principal was less than that, as I recall, I think with interest it ran a little over $500,000; the jury awarded nearly the whole amount claimed.

Q. And those were your cross-demands in the four cases?

(Testimony of Alfred Sutro.)

A. They were not limited to cross-demands. We only had cross-demands in two suits. We did not have to file cross-demands in the suits wherein we were plaintiffs.

Q. And what were the cross-demands in 16,430?

A. About $189,000, as I told you.

Q. And the one in—

A. (Intg.) Mr. Peart, let me explain to you, so that you will have it clearly, because I think I am right in saying, I think, I know you want the facts —We could not establish our cross-complaint, the facts of our cross-complaint, which in substance were that this cake was as represented in the contract, without disputing Porter in his contention that we had breached the warranty contained in the contracts in giving him inferior cake—the same witnesses were used, all of the witnesses were used for that double purpose absolutely and necessarily.

Mr. PEART.—If your Honor please, I think I will have to move to strike out that answer as argumentative and not responsive.

A. May I say, your Honor, I would like to make that statement as a part of my answer?

The COURT.—I do not think it is necessary now.

Mr. PEART.—Q. As to the second suit, how much was the cross-demand?

A. I will have to ask Mr. Prince, he has the record there.

Mr. REDMAN.—May I make this suggestion to your Honor: I want to draw a matter to the Court's attention. It is alleged in [61] these cases that

(Testimony of Alfred Sutro.)

these suits are ancillary to the consolidated action; that is how this Court acquires jurisdiction. Now, might we not have, that being the allegation that they are ancillary, the papers in the consolidated case, all of them, considered as before the Court, and that will save a lot of trouble. Then we will know by reference to the record what these amounts were, when the cross-complaints were filed, and the dates of them. May not that be considered done?

The WITNESS.—Might I state, your Honor, that the allegation with reference to the ancillary nature of these suits was made to show the jurisdiction of the court; the jurisdiction of the court is now conceded. All of the papers and the entire record in these cases to which counsel has referred would seem to me, and I respectfully submit, unnecessarily encumber the record in this case.

The COURT.—They will be before the Court, and they will not necessarily be incorporated in any record if any is made.

The WITNESS.—We have absolutely no objection to their being before the Court.

Mr. PEART.—Q. If you can tell us, what was the amount asked for in the second suit?

A. $219,374.39.

Q. That is action 16,452? A. Yes.

Q. And in the other two cases there were no cross-demands? A. No.

Q. In the direct action which the Java Cocoanut

(Testimony of Alfred Sutro.)

Oil Company filed against Porter, what was the amount claimed?

A. Will you give them, Mr. Prince?

Mr. PRINCE.—There were two of them.

The COURT.—Tell us both; one at a time.

Mr. PRINCE.—The first one was $22,342.50, that is action No. 16,498, and in 16,518 the prayer of the complaint is for $65,823.68.

Mr. PEART.—Q. Those amounts claimed by the Java Cocoanut Oil Company against Porter in the four suits mentioned, two by [62] cross-complaint and counterclaim and two by direct action, represents the total demands of the Java Company against Porter under the contracts referred to, in the consolidated action, do they? A. Yes.

Q. Then, to clear the matter again in my own mind, you have testified that of that demand substantially $190,000 had accrued and Porter had refused payment of it, before any litigation commenced? A. Yes.

Q. And as to the balance of any demand which had not accrued, by reason of the fact that delivery had not yet been made under the contract, Porter had definitely stated to the Java Cocoanut Oil Company or its officers that he repudiated the contract? A. No.

Q. I thought you so testified?

A. No. I told you that each shipment was treated separately; as each shipment came in we tendered it to Porter, and he then would either

refuse it or repudiate it, sometimes he repudiated it and sometimes he refused.

Q. Did he not repudiate any obligation on his part of the Java Cocoanut Oil Company under these contracts prior to the litigation?

A. No, as I told you several times, my memory is there was only one instance in which there was a repudiation, and we were excused under the ruling of Judge Dooling, or we were upheld by his ruling in having made no tender, but as to most of the shipments and most of the obligations under each contract, we made tenders of each shipment as it arrived, and the written tenders were offered in evidence during the trial. Now, I thought I made that clear to you before.

Q. I probably misunderstood what you said. I thought you said he repudiated the contracts during the litigation?

A. No; my recollection is there was only one repudiation. Isn't that right, Mr. Prince?

Mr. PRINCE.—There was only one repudiation.

The WITNESS.—That is what I mean, there was one repudiation [63] and as to that we did not have to make a tender. That was later along in the course of the trouble.

Q. When was the attachment levied on behalf of Porter in action 16,430, do you recall?

A. I can tell you that exactly, January 30.

Mr. REDMAN.—It is in the return.

A. No, that is your return. You are speaking of our attachment?

(Testimony of Alfred Sutro.)

Mr. PEART.—No, I am speaking of the Porter attachment. I think the return shows that was December 20, it was levied upon.

A. As I recall, in the Fidelity suit you did not take out your attachment until December 26.

Q. 28th.

A. Whatever that date is; I mean it is on or about that time.

Mr. PEART.—Q. In the case against the Fidelity & Deposit Company, Mr. Sutro, do you recall when the Java Cocoanut Oil Company filed a bond on the release of the attachment levied by Porter?

A. I submit that question is immaterial.

The COURT.—You may answer if you can.

A. I don't recall the date; the record will show. We can find out the date if counsel wants it.

The COURT.—Is that also in the record?

Mr. REDMAN.—It is in the marshal's return.

The COURT.—I have a distinct prejudice against a witness being asked to tell us something which is in a record. You may refer to the record.

A. You are now asking me about 16,430?

Mr. PEART.—Yes.

A. I do not understand that they are testing my memory. They want to get the fact.

Q. There is nothing in the record to show, except the Marshal's return, that the bond was filed. I would like to get at that in some preliminary way. I will ask you, Mr. Sutro, if this is the bond filed with the Marshal to release the attachment in action 16,430?

(Testimony of Alfred Sutro.)

A. This appears to be the bond. [64]

Q. The chief deputy marshal just handed it to me.

A. It appears to have been filed, executed anyhow, on December 24, 1920; I imagine it was filed that same day, because I would know we were getting it filed as quickly as we could.

Mr. PEART.—If your Honor please, this is an original record of the Marshal's office, and I would like to read it in evidence.

Mr. SUTRO.—Of course, our objection to that is that it does not make any difference whether we filed a release bond or not; it is perfectly useless evidence, your Honor. The object of that, may I state to the Court briefly, is to support the contention that by having filed this release bond we rid ourselves of this attachment. I understand that is the theory.

The COURT.—They will be allowed to introduce it in evidence. If not material or competent, it will be rejected in making up a decision.

Mr. SUTRO.—Exception."

To the ruling of the Court in admitting said bond in evidence, the plaintiff thus then and there duly excepted, and said exception is hereby designated as

EXCEPTION No. 1.

"Mr. PEART.—Shall I read it, or the reporter?

The COURT.—It may be copied into the record. It is just the release bond we want copied.

(Testimony of Alfred Sutro.)

The WITNESS.—You had better leave that with the reporter, and he can copy it into the record.

Mr. PEART.—Very well."

The bond in question reads as follows: [65]

"AMERICAN SURETY COMPANY
of New York.

Capital $5,000,000.

In the District Court of the United States for the Northern District of California, Second Division.

No. 16,430.

WARREN K. PORTER, Doing Business Under the Name and Style of PORTER TRADING COMPANY,

Plaintiff,

vs.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation, and OLIEFABRIEKEN INSULINDE, N. V., a Corporation,

Defendant.

UNDERTAKING ON RELEASE OF ATTACHMENT.

WHEREAS, the above-named plaintiff has commenced an action in the District Court of the United States for the Northern District of California, Second Division, against the defendants claiming that there is due to said plaintiff from defendants the sum of One Hundred Forty-three

Thousand Five Hundred Sixty-six & 25/100 ($143,-566.25) Dollars, besides interest; and thereupon an attachment issued against the property of the defendants as security for the satisfaction of any judgment that might be recovered therein; and certain property and effects of the defendant, Java Cocoanut Oil Company, Ltd., has been attached and seized by the Marshal of said district, under said writ;

And WHEREOF, the said defendant, Java Cocoanut Oil Company, Ltd., is desirous of having said property released from said attachment.

NOW THEREFORE, the undersigned, American Surety Company of New York, a corporation duly organized and existing under the laws of the State of New York, and duly authorized to transact business in the State of California, in consideration of the premises, and also in consideration of the release from said attachment of all property attached, as above mentioned and the discharge of said attachment, does hereby undertake in the sum of Seventy-two Thousand One Hundred Sixty-six & 25/100 Dollars ($72,166.25), and promise that in case the plaintiff recovers judgment in said action, the defendant, Java Cocoanut Oil Company, Ltd., will, on demand, redeliver the attached property so released to the proper officer to be applied to the payment of the judgment, or in default thereof, that the defendant, Java Cocoanut Oil Company, Ltd., and surety will, on demand, pay to the plaintiff the full value of the property released, not exceeding the amount of such judgment.

(Testimony of Alfred Sutro.)

IN WITNESS WHEREOF, the corporate seal and name of the said Surety Company is hereto affixed and attested at San Francisco, California, by its duly authorized officers, this 24th day of December, A. D. 1920.

AMERICAN SURETY COMPANY OF NEW YORK.

By D. ELMER DYER,
Resident Vice-president. [66]
Attest: E. C. MILLER,
Resident Assistant Secretary."

Mr. PEART. (Continuing).—"Q. I will ask you, Mr. Sutro, if this is the bond on release of attachment which was filed with the Marshal by you in the other action, No. 16,452?

A. That appears to be the bond that was filed. Yes, I recognize my handwriting on that, 27,500. That was executed December 30, 1920, and I assume filed at the same time. We have the same objection and exception, your Honor?

The COURT.—The same ruling and exception."

Plaintiff having thus then and there duly except to the ruling of the Court in admitting in evidence said bond filed in action No. 16,452, hereby designates said exception as

EXCEPTION No. 2.

"Mr. PEART.—In like manner, we would like to ask that it be stipulated that this be copied.

The COURT.—It may be."

The bond in question reads as follows:

"In the District Court of the United States for the Northern District of California, Second Division.

No. 16,452.

WARREN R. PORTER, Doing Business as PORTER TRADING COMPANY,

Plaintiff,

vs.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation, and OILEFABRIEKEN INSULINDE, N. V., a Corporation,

Defendants.

UNDERTAKING ON RELEASE OF ATTACHMENT.

WHEREAS, the above-named plaintiff has commenced an action in the District Court of the United States, for the Northern District of California, Second Division, against the defendants claiming that there is due to said plaintiff from defendants the sum of Twenty-seven thousand five hundred dollars ($27,500); and thereupon an attachment issued against the property of the defendants as security for the satisfaction of any judgment that might be recovered therein; and certain property and effects of the defendant, Java Cocoanut Oil Company, Ltd., has been attached and seized by the Marshal of said District, under said writ; [67]

AND WHEREAS, the said defendant, Java Cocoanut Oil Company, Ltd., is desirous of having said property released from said attachment.

NOW, THEREFORE, the undersigned, American Surety Company of New York, a corporation duly organized and existing under the laws of the State of New York, and duly authorized to transact business in the State of California, in consideration of the premises, and also in consideration of the release from said attachment of all property attached, as above mentioned and the discharge of said attachment, does hereby undertake in the sum of Twenty-seven Thousand Five Hundred ($27,500.00) Dollars, and promises that in case the plaintiff recovers judgment in said action, the defendant, Java Cocoanut Oil Company, Ltd., will, on demand, redeliver the attached property so released to the proper officer to be applied to the payment of the judgment, or in default thereof, that the defendant, Java Cocoanut Oil Company, Ltd., and surety will, on demand, pay to the plaintiff the full value of the property released, not exceeding the amount of such judgment.

IN WITNESS WHEREOF, the corporate seal and name of the said Surety Company is hereto affixed and attested at San Francisco, California, by its duly authorized officers, this 30th day of December, A. D. 1920.

AMERICAN SURETY COMPANY OF NEW YORK.

By R. D. WELDON,
Resident Vice-president.

Attest: E. C. MILLER,
Resident Assistant Secretary."

"Mr. PEART.—Q. Did Mr. Sutro, did you have a written contract with the Java Cocoanut Oil Company for your services in these matters with Porter?

A. No.

Q. What conversations, if any, did you have with any representative of the Java Cocoanut Oil Company in regard to compensation?

A. Well, that is a very difficult question to answer. I had a number of talks with Mr. Clements, I might say, before he left San Francisco; on September 11, 1920 he paid my firm as a retainer on this transaction $5000, and Mr. Clements told me as a part of the conversations relative to the whole litigation after the verdict was rendered, that if we could collect that judgment, in view of the year's work or more than a year's work which had been done, and having a judgment for practically $500,000, that they would be perfectly willing to pay us $100,000 if we collected it. [68]

Q. How did it come about that on December 10, 1921, you were paid $10,000? Did you render a statement? A. On December 10?

Q. Yes.

A. That was immediately after the verdict—no, there was no statement rendered.Mr. Clements said that the tremendous work that had been done, he thought deserved recognition promptly, whether or not anything was collected from Porter. That was immediately after the judgment. The judgment was rendered on December 8.

Q. The next payment that was made to you was January 16, 1922?

A. Yes. We collected some money which was in the hands of the Marshal, a good deal more than

(Testimony of Alfred Sutro.)

that, and Mr. Clements was in New York, had gone back, and wired us, as I recall, to retain, or had told me before he left here we should retain for our services out of that sum $15,000.

Q. Were you paid a further sum after that for this litigation? A. Yes.

Q. What amount?

A. There were further sums paid at later times. There was nothing more paid in 1921. So far as any further sums are concerned, while I have no objection, if your Honor rules I should testify as to it I do want to make an objection that it is not material. We have shown that they have paid us at least the amount we are suing for, and it is stipulated that the reasonable value of the services that we rendered in this case was $15,000, and the other $10,000—does your Honor direct me to testify?

The COURT.—Are you basing your right to recover on what was paid in that action as distinguished between your services, as you claim, in your release of attachment and the defense of the action and the establishment of your own cause of action?

A. I will answer your Honor by saying I want your Honor to understand, and counsel to understand, there never was, so far as Mr. Clements, or the plaintiff in this case, is concerned, any distinct allocation to these actions of any specific amount of money. I [69] do not wish to appear here as conveying that impression. That is a fact. In bringing this suit, we have allocated to these two suits, out of the total amount paid us, these two

sums, and counsel have stipulated that they are reasonable sums for the services that we have alleged. I do not want the Court or counsel to think that I am saying that there was any specific allocation. There was not.

The COURT.—I think the question is proper for this reason, suppose it should appear that this was all you had gotten for your services. I think you ought to answer.

A. We were paid on January 16, 1922, the further sum of — that I gave you — February 27, 1922, $6000; April 15, 1922, $5000; October 30, 1922, $5000. And Mr. Clements told me he was sorry that conditions did not warrant a much larger recognition of all the work that had been done. I want to also say these services were not exclusively for this litigation. In the disposition of that meal—I am making this statement, because I want the facts to be absolutely clear before the Court and counsel. Forms had to be prepared for the sale of the meal that was ground. Further, this cake—Mr. Clements also had sold the cake to the Albers Brothers Milling Company out of the same shipments that were intended for Porter, and out of which Porter was tendered delivery; arrangements had to be made for the taking of this cake by Albers Bros.; Albers Bros. took out of every shipment the cake which they had contracted to take, and it was the same shipment that was tendered to Porter. There were also parts of this cake sold to Edward L. Eyre Co.; contracts had to be prepared; Beanston, who had a mill—I forget

(Testimony of Alfred Sutro.)

exactly the name of it—the Occidental Mill, I think it was, I am not sure of that, had contracted to grind certain of this cake; certain dealings were had with him. The International Milling Company was a concern that Porter had with some associates, one of whom was Mr. Christin sitting there; they had formed this concern, and they were going to grind this [70] cake; they had leased some property on which they put a mill, and when market conditions looked very flourishing, this thing was in its incipiency, and they were going to grind this cake; some of the cake which Porter accepted, and which he had not paid for, had been taken over to this mill, and there were certain complications that had arisen out of that, and services were rendered in connection with that. But all of these services, I might say, we considered as thrown in with the main litigation here. That isn't all. There were some other things, for instance Porter had joined the Oliefabrieken Insulinde, which was the concern that produced this copra cake in Java, as defendant in this action; the Oliefabrieken, from our viewpoint, as we were upheld by the court here, had nothing whatever to do with these contracts, and it had never been in business in California, and it was very undesirable, of course, to have it as a defendant here; it would have been subject to penalties on behalf of the State if it had transacted business here, and we had to make motions to get it out of the litigation. These motions prevailed. Then there were one or two questions of taxation concerning which Mr.

Clements interrogated me, and license taxes to be paid by the Java Cocoanut Oil Company, questions of taxation with reference to the site that it has over at the Western Pacific Mole, where the cocoanut oil is received in large tanks, and matters of that sort; but, as I say, we considered, in view of the disaster which had befallen the company by reason of Porter's action, that we would not make any specific charges for those services, but it was all included in the total amount paid us of $50,000.

Mr. PEART.—I only have $45,000.

A. I don't know if I told you that Mr. Clements paid us a retainer of $5,000 on September 11, 1920.

The COURT.—Yes. The witness testified to a $5,000 retainer sometime in September, I think.

A. September 11, 1920.

Mr. PEART.—Q. Now, Mr. Sutro, if I understand your testimony, three payments of $6,000, $5,000, and $5,000 paid in [71] February, April and October, 1922, were referable to services rendered in all of the matters you have just enumerated and in some part to the litigation in question?

A. No. I told you that this $6,000 was paid February 27th; get this right, now. $5,000 April 15, $5,000 October 30, and that no charge was made for the various matters that I have mentioned outside of this litigation. But I mentioned them to you, because services were rendered to the concern, and Mr. Clements paid us $50,000 for services in this litigation as such, and the other matters we allowed to go by default, if you please, we did not make a

(Testimony of Alfred Sutro.)

charge for them. We considered the $50,000 as payment for the services in litigation between Porter and the Java Cocoanut Oil Company, and no charges were set up on our books for any other services.

Q. Did you bill them?

A. We did not bill them.

Q. But in your books you charged it to this litigation?

A. This litigation; it is credited to the Java Cocoanut Oil Company, and no charges were set up for services outside of this litigation. I simply mention this to you so that you will be set entirely right as to what transpired between that concern and ourselves. I may further say to you, I don't know whether you got it, that Mr. Clements told me if we could collect that judgment he would be very glad to pay us $100,000, because he had never seen better, more efficient or extensive work done.

Q. In the procuring of the judgment?

A. In the securing of the judgment. It might interest you also to know that the scientific investigation that the two professors made in this case was the subject of a paper that Professor Doan read at a meeting of scientists in Cambridge, Mass., last fall.

Q. How often did you consult with these professors during the trial?

A. A great many times after the beginning of July.

Q. Their investigation extended over what period of time, as to the quality of cake?

A. My recollection—and, of course, I am [72]

just giving you the best of my recollection, I may be mistaken about this, but it extended, as I recall, from the beginning of the year 1921 to the end of the time when they testified here.

Q. 1921?

A. 1921. It took some time to formulate the scheme that we had in mind, to get at the truth of this thing and find out if this meal, ground from that cake which was infested with bugs, such as all of that cake was shown to the jury is infested that comes from Java to this country, would be injurious to cattle, we got the Palo Alto Stock Dairy to permit us to make the experiment, and I think there were 20 Holstein cows, the very finest we could find, on which we experimented.

Q. Were there many preliminary motions, or arguments of a legal nature in the four actions?

A. Some of them; we had very many after 1921; there might have been some before, but the heavy work was done after the beginning of 1921; and you can take it from me that the preparation of the counterclaims and cross-complaints, in view of the many contracts and the many shipments that had been made, was a task, to use one of your words, it was colossal in its nature; I spent many Sundays and holidays on it with Mr. Prince.

Q. If I understood your statement to the Court a little while ago, Mr. Sutro, you never made any allocation of any particular charge against any particular service rendered by your firm to the Java Cocoanut Oil Company in this litigation?

(Testimony of Alfred Sutro.)

A. No, we did not.

Mr. PEART.—That is all.

The WITNESS.—Now, your Honor, I would like to state on redirect examination, in view of the cross-examination, that the defense of the suit that was brought by Porter, the two suits that were brought by Porter, involved practically absolutely, I am using the word advisedly, the same work that we did in prosecuting the counter-claims and cross-complaints which we filed in these suits, and the complaints which were filed in the other two suits that were brought against Porter; that there were many witnesses whom we interviewed, and while we only had 48 testify, we had a good [73] many more in reserve. There was not one, that I recall, who was limited to any particular matter as to any-one suit; in fact, at the very beginning of the trial Judge Dooling ruled that he would consider that we should treat the cake in all of these shipments as the same kind of cake, and that there was one question before the jury, and that was as to the quality of the cake involved in all of these shipments; and that in order to defeat Porter in his two suits, we necessarily had to offer facts which, if the jury believed them, as they did, as we proved to them, entitled us to prevail in all of the suits.

The COURT.—Any further questions?

Mr. PEART.—Q. Of course, these same facts, as you have stated, had to be prepared, and the authorities had to be prepared, in order to establish your case against Porter?

A. I have so stated.

Mr. PEART.—That is all.

Mr. SUTRO.—That is our case.

The COURT.—The defense may proceed."

"Mr. PEART.—If your Honor please, we would like to ask the Clerk to produce the records in this case, and would like to offer the judgment-roll in the consolidated action No. 16,430.

The COURT.—It may be considered in evidence for such uses as it may serve; if this case should go any further I see no necessity for printing it, unless you take it up as an exhibit to the other court.

Mr. PEART.—We will offer all of the papers, for a similar reason, in all four of the actions mentioned, No. 16,430, No. 16,452, 16,498, and 16,518.

Mr. SUTRO.—If your Honor please, we object to all of these offers on the ground that it is immaterial matter and [74] incompetent and irrelevant. The only purpose would be in connection with the ancillary nature of this action. The return on the writs of attachment shows, as I say, that is simply put in to show the court's jurisdiction. That is admitted now. If we should be under the necessity of taking this case to an Appellate Court and have to put into the record all of that matter, it would be a severe hardship, I submit, to your Honor.

The COURT.—You come in and testify that you allocated none of your charges, and they want to show the exact amount of labor that you gave to the merits of the suit. There must be some way of arriving at what you are entitled to for a dissolution

of this attachment, if you are entitled to anything. The objection will be overruled. The papers will be admitted for the personal inspection of the Court, but not to be incorporated in the record."

To the foregoing ruling of the Court the plaintiff then and there duly excepted and said exception is hereby designated as

EXCEPTION No. 3.

"Mr. PEART.—In like manner, we would like to offer the minutes of the Court, and the docket in each of the cases, for the same purpose.

The COURT.—What do you mean, as to these particular cases?

Mr. PEART.—Yes, as to these particular cases. Mr. Sutro has testified to these matters, and here is the documentary evidence, and the minutes of the Court, and of course, they are the very best evidence.

The COURT.—For the same limited purpose that the Court has stated in connection with the offer of the files, the judgment-roll, [75] the minutes of the Court in reference to these cases, and the documents will be subject to the inspection of the Court for whatever value they may have, but not to be incorporated in any record.

Mr. SUTRO.—Might I say to your Honor at this point, which your Honor stated, about the allocation of the fees, just to call your Honor's attention, in connection with our objection, to the stipulation that they have made, that $15,000 in one case and $10,000 in another case were reasonable charges.

The COURT.—For the whole case?

Mr. SUTRO.—No, that is just the point that I want to bring to your Honor's mind. 'It is stipulated that the sum of $10,000 is the reasonable value of the services rendered subsequent to the 27th day of December, 1920, by Messrs, Pillsbury, Madison & Sutro, as attorneys for plaintiff in defending the original action No. 16,452,' and the stipulation is the same in the other case. In other words, that that is the reasonable charge after attachment was levied in each case. Now, it narrows itself down to the one point, are we entitled to that fee paid for these services for defending this suit and ridding the plaintiff of the attachment in each case.

The COURT.—That is a question of law. Their theory is a little different. Their theory is there must be a segregation of services performed in the dissolution of the attachment from the services performed in defending the case on the merits. They have a right to produce their testimony in support of that theory.

Mr. SUTRO.—I want to bring clearly to your Honor's mind that the stipulation is that these are reasonable amounts for the services after the attachment.

The COURT.—I understand." [76]

Said judgment-roll in said consolidated action number 16,430 and said all the papers in said actions numbers 16,430, 16,452, 16,498 and 16,518, in addition to certain matters already set out in this bill of exceptions, show the following facts:

The original action number 16,430 was commenced by said Warren R. Porter on or about

August 28, 1920, for the recovery of $143,566.25, with interest and costs, from Java Cocoanut Oil Company, Ltd., the plaintiff in the case at bar. On or about September 10, 1920, Java Cocoanut Oil Company, Ltd., filed an answer to said complaint, together with a counterclaim and cross-complaint praying the recovery from Porter of $189,431.93 damages, with interest and costs. On or about September 13, 1920, said Java Cocoanut Oil Company, Ltd., on such counterclaim and cross-complaint caused and procured a writ of attachment to issue out of and over the seal of the above-entitled court, and to be levied upon the property of said Warren R. Porter. On or about December 6, 1920, said Warren R. Porter procured the writ of attachment mentioned in the amended complaint in action number 16,715, one of the cases at bar, to issue out of and over the seal of the above-entitled court against the property of plaintiff, and to be levied upon certain property of plaintiff, on or about December 20, 1920, as appears from the return of the United States marshal, hereinbefore set forth as Plaintiff's Exhibit 1. The attachment bond sued on in said action number 16,715 was given in connection with this attachment. Thereafter and on or about December 24, 1920, said Java Cocoanut Oil Company, Ltd., posted with the United States marshal the undertaking hereinabove set out at length, and said marshal thereupon released from said attachment all the property levied upon, as likewise appears from said Plaintiff's Exhibit 1. Subsequently and on or about July 12, 1921, said [77] Warren R.

Porter filed an amended complaint in said original action number 16,430 setting forth three causes of action against said Java Cocoanut Oil Company, Ltd., alleging a total damage of $172,166.25.

Action number 16,452 was commenced by said Warren R. Porter against said Java Cocoanut Oil Company, Ltd., on or about October 1, 1920, to recover $27,500 damages, with interest and costs. Porter claimed an additional $100,000 by an amended cross-complaint and counterclaim filed on or about July 12, 1921. On December 27, 1920, or thereabouts, said Warren R. Porter caused the writ of attachment mentioned in the amended complaint in said action number 16,716, the other of the cases at bar, to issue out of and over the seal of the above-entitled court against the property of Java Cocoanut Oil Company, Ltd., and to be levied upon such property as is shown by the return of the United States marshal, hereinbefore set out as Plaintiff's Exhibit 2. The attachment bond sued on in said action number 16,716 was given in connection with this attachment. On December 30, 1920, or thereabouts, said Java Cocoanut Oil Company, Ltd., Posted with the United States marshal the undertaking hereinabove set forth at length, and said marshal thereupon released from said attachment all the property levied upon, as likewise appears from said Plaintiff's Exhibit 2.

On or about January 19, 1921, said Java Cocoanut Oil Company, Ltd., in said action number 16,452, filed a cross-complaint and counterclaim, by such cross-complaint and counterclaim praying the re-

covery from said Warren R. Porter of $219,374.39 damages, with interest and costs. On or about January 31, 1921, said Java Cocoanut Oil Company, Ltd., in said action number 16,452, caused a certain writ of attachment to issue out of and over the seal of the above-entitled court against the property of said Warren R. Porter. Said writ was levied on certain property of said [78] Warren R. Porter on or about February 2, 1921. On or about June 4, 1921, upon motion of said Warren R. Porter, said writ of attachment was duly quashed, vacated and set aside. On or about March 1, 1921, said Java Cocoanut Oil Company, Ltd., caused an *alias* writ of attachment to issue in said action number 16,452, out of and over the seal of said court, and to be levied on March 2, 1921, or thereabouts, on certain property of said Warren R. Porter.

Action number 16,498 was commenced by Java Cocoanut Oil Company, Ltd., against said Warren R. Porter on or about January 19, 1921, to recover $22,342.50, with interest and costs. Action number 16,518 was commenced by said Java Cocoanut Oil Company, Ltd., against said Warren R. Porter on or about February 23, 1921. An amended complaint praying the recovery of $65,826.68, with interest and costs, was filed on or about October 26, 1921. In both these last mentioned actions Porter filed cross-complaints and amended cross-complaints praying in each case the sum of $100,000 damages with interest and costs. In action number 16,498 Java Cocoanut Oil Company, Ltd., on or about January 31, 1921, caused the issuance of a

writ of attachment out of and over the seal of the above-entitled court, which writ was levied upon certain property of said Warren R. Porter on or about February 2, 1921.

Following the introduction in evidence of the judgment-roll in the consolidated action number 16,430 and all of the papers in actions numbers 16,430, 16,452, 16,498 and 16,518, said judgment-roll and said papers showing the facts stated, the following proceedings occurred: [79]

"The COURT.—Has the defense any further testimony?

Mr. REDMAN.—I think the bond in releasing the attachment is in evidence, is it not?

The COURT.—Yes.

Mr. REDMAN.—I think that is all. I think it is simply a question of law.

Mr. PEART.—Before the case is closed, in each of the cases I will make this motion, first, in case 16,430, we request the Court to render a judgment in favor of the plaintiff for a sum not exceeding the costs incurred in action 16,430 referred to in the amended complaint herein, to wit, the sum of $1,591.64. If your Honor should deny that, we take an exception; we request your Honor to render judgment in favor of the plaintiff for a sum not exceeding said sum of $1,591.64, plus such sum, if any, paid or incurred by the plaintiff for services rendered by its attorneys in said action No. 16,430 from the time that the attachment was levied in said action, to wit, on or about December 20, 1920, until the same was released by the giving of

a release of attachment undertaking issued in said action, including any services rendered in the procuring of said release of attachment undertaking; and should your Honor deny that, we ask for an exception. And, finally, we request your Honor, should your Honor deny that request, that you render judgment in favor of the plaintiff for a sum not exceeding the amount of the costs, plus such sum, if any, in each action paid or incurred by the plaintiff for services rendered by its attorneys from the time the attachment was levied, which in case 16,430 was December 20, 1920, and in case 16,452 was December 27, 1920, until the attachments were released by the giving of a release of attachment undertaking, [80] which in case 16,430 was December 24, or four days later, and in case 16,452 was December 30, three days later, including any service rendered in the procuring of the release of attachment undertaking. Should your Honor deny this, we most respectfully ask an exception, and request your Honor to disallow as damages recoverable by plaintiff in either action the value of any services rendered by plaintiff's attorneys in either of the actions, 16,430 or 16,452 subsequent to the release of the attachment effected by the giving of the two release attachment undertakings. If your Honor should deny that we ask for an exception."

The foregoing constitutes all of the proceedings had and all of the testimony and evidence offered and received on the trial of said actions, and all matters proved on said trial. Thereafter, and on

the pleadings and proof, the Court found the law, in so far as it related to the plaintiff's claims for attorneys' fees, as set out in the respective second causes of action in its two amended complaints, against the plaintiff and in favor of the respective defendants, and ordered the entry of judgment in favor of plaintiff against the respective defendants only for the amounts sued for in its respective first causes of action, together with interest on the amounts therein prayed from December 8, 1921, and its costs of suit in these actions.

Now, within the time required by law, the rules of this court and stipulation of the parties, said plaintiff proposes the foregoing as and for its bill of exceptions to the rulings of the Court made during the trial of said actions and the decision [81] of said court, and prays that it may be settled and allowed as correct.

Dated: San Francisco, September 13, 1923.

PILLSBURY, MADISON & SUTRO,

Attorneys for Plaintiff. [82]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Stipulation to Foregoing as the Bill of Exceptions in Both the Above-entitled Actions and to the Correctness of the Same.

It is hereby stipulated that, subject to the hereinafter mentioned objection of the defendant in each action above entitled, the attached and foregoing may be and is the bill of exceptions in both the above-entitled actions and that separate bills of exceptions need not be prepared or filed therein; and that, subject to the said objection of said de-

fendants, the above [83] and foregoing constitutes a true and correct bill of exceptions in said actions (said actions having been duly consolidated for trial), and contains all of the proceedings had and all of the evidence offered and received on the trial of said actions and all of the rulings of the Court made during the trial of said actions; and that, subject to said objection, the same may be settled and allowed as the bill of exceptions in said two actions and to said rulings and to the decisions of the Court in said two actions, and each of them; the defendant in each of said actions objects to the matter contained in said bill of exceptions between line 7, page 54, to and including line 11, page 55 thereof, and asks that the same be stricken out, said objection having been proposed by said defendants as an amendment to said bill of exceptions within the time and in the manner required by law.

Dated: September 27, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

REDMAN & ALEXANDER,
Attorneys for Defendant Fidelity and Deposit Company of Maryland.

HARTLEY F. PEART,
Attorney for Defendant Globe Indemnity Company.

The objection aforesaid of defendants is sustained, and the subject matter thereof stricken from the bill, in that it is superfluous.

BOURQUIN, J. [84]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Order Settling, Certifying and Allowing Bill of Exceptions.

The attached and foregoing bill of exceptions now being presented in due time and found to be correct, I do hereby certify that the said bill is a true bill of exceptions, and contains all of the proceedings had and all of the evidence offered and received on the trial of the above-entitled actions (said actions having been duly consolidated for trial) and all of the rulings [85] of the Court

made during said trial and all of the exceptions of the respective parties thereto, and said bill of exceptions is accordingly hereby settled, certified and allowed.

Dated: October 1, 1923.

(Sgd.) BOURQUIN,
United States District Judge.

Receipt of copy of the within proposed bill of exceptions is hereby admitted this 14th day of Sept./23.

HARTLEY F. PEART,
Attorney for Globe Indemnity Co.
REDMAN & ALEXANDER.

[Endorsed]: Filed Oct. 4, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [86]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

Petition for Writ of Error.

Java Cocoanut Oil Company, Ltd., a corporation, the plaintiff above named respectfully shows:

That under date of April 28, 1923, there was entered in the above-entitled court and cause a judgment in favor of said plaintiff and against the above-named defendant, said judgment being, however, only in the amount of $1591.64, with legal interest from December 8, 1921, and costs of suit, and not in the amount prayed by plaintiff in the amended complaint herein; in which said judgment and the proceedings had prior thereto in this cause, certain manifest errors were committed, to the grievous prejudice of this plaintiff, all of which more fully appears from the assignment of errors filed with this petition.

WHEREFORE, plaintiff feeling aggrieved by said judgment, petitions and prays this Court for an order allowing plaintiff to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the [87] laws of the United States in that behalf made and provided, for the correction of the errors so complained of; and that there may be attached to such writ of error a transcript of the record, proceedings and papers herein, duly authenticated, with said assignment of errors and a prayer for reversal, and that the same may be sent to said Circuit Court of Appeals; also that an order be made fixing the amount of the bond in this case.

Plaintiff herewith submits its assignment of errors in accordance with the rules of said Circuit Court of Appeals and the course and practice of this court.

And so your petitioner will ever pray.

Dated: San Francisco, October 11th, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 11, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [88]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

Assignment of Errors and Prayer for Reversal.

Java Cocoanut Oil Company, Ltd., a corporation, plaintiff and plaintiff in error in the above-entitled cause, contends that in the record, opinion, decision and final judgment in said cause there is manifest and material error, and said plaintiff and plain-

tiff in error now makes, files and presents the following assignment of errors on which it will rely in the prosecution of its writ of error in said cause.

I.

That the above-entitled court erred in ordering, in rendering and in entering the final judgment herein dated April 28, 1923.

II.

That said court erred in not ordering, rendering and entering judgment for and in favor of the plaintiff in the sum of $16,591.64, together with interest on the sum of $1591.64 at the rate of seven per cent per annum from the 8th day of December, 1921, and for its costs of suit, as prayed in the amended complaint [89] herein.

III.

That the court erred in holding, adjudging and determining that said plaintiff was entitled to judgment only in the sum of $1591.64, with local legal interest from December 8, 1921, and costs herein, and in not holding, adjudging and determining that plaintiff was entitled to judgment for attorneys' fees upon the second cause of action in the amended complaint herein.

IV.

That the said court erred in holding, adjudging and determining that said plaintiff was not entitled to recover attorneys' fees upon the second cause of action in the amended complaint herein, and in not ordering and entering judgment in plaintiff's favor for such fees.

V.

That the facts found by said court are insufficient to support the judgment herein, in so far as said judgment is that plaintiff do not have and recover attorneys' fees upon the second cause of action in the amended complaint herein.

VI.

That the said court erred in holding, adjudging and determining that the security, given the United States marshal by the plaintiff to relieve its property from the attachment in said second cause of action referred to, discharged the said attachment.

VII.

That the said court erred in holding, adjudging and determining that plaintiff, not having segregated said attorneys' fees for services due to said attachment from those due to the trial of the action in which said attachment issued, cannot recover for them. [90]

VIII.

That the said court erred in holding, adjudging and determining that attorneys' fees mentioned in the second cause of action of the amended complaint were not recoverable by plaintiff because they were not damages sustained by plaintiff by reason of said attachment.

IX.

That the said court erred in holding, adjudging and determining that services by plaintiff's attorneys to dispose of the action No. 16,430, in the amended complaint mentioned, and the merits thereof, were not "by reason" of said attachment.

X.

That the trial court erred in admitting in evidence over plaintiff's objection and subject to plaintiff's exception the bond given the United States marshal by this plaintiff to release its property from attachment in action No. 16,430, mentioned in said amended complaint.

XI

That the trial court erred in admitting in evidence over plaintiff's objection and subject to plaintiff's exception the bond given the United States marshal by this plaintiff to release its property from attachment in action No. 16,452, mentioned in said amended complaint.

XII.

That the trial court erred in admitting in evidence over plaintiff's objection and subject to plaintiff's exception the judgment-roll and all the papers in the consolidated action No. 16,430, mentioned in said amended complaint.

WHEREFORE, plaintiff prays that said judgment be reversed, and that said court be directed to render and enter [91] judgment in favor of plaintiff in the amount prayed in the amended complaint herein.

Dated: San Francisco, October 11th, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 11, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [92]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

Order Allowing Writ of Error.

On this 11th day of October, 1923, came the plaintiff herein, Java Cocoanut Oil Company, Ltd., a corporation, and filed herein and presented its petition praying for the allowance of a writ of error in the above-entitled action to the United States Circuit Court of Appeals for the Ninth Circuit; and it appearing to the Court that said petition should be granted and a transcript of the record in said action upon the judgment therein rendered, duly authenticated, together with the assignment of errors, the original writ of error and citation, should be sent to the United States Circuit Court of Appeals for the Ninth Circuit, as prayed, in order that such proceedings may be had as may be just to correct any errors:

NOW, THEREFORE, it is hereby ordered that a writ of error be and the same is hereby allowed

herein as aforesaid, and that the said writ of error issue out of and over the seal of the above-entitled court; that the amount of bond on [93] said writ of error be and the same is hereby fixed at $500; that a true copy of the record, opinion of the Court, bill of exceptions, assignment of errors, and all procedings and papers upon which the judgment herein was rendered, together with the prayer for reversal, original writ of error and citation, all duly authenticated according to law, shall be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, in order that said Court may inspect the same and take such action thereon as it may deem proper according to law and justice.

Dated: San Francisco, October 11th, 1923.

(Sgd.) JOHN S. PARTRIDGE,
Judge.

[Endorsed]: Filed Oct. 11, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [94]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

Cost Bond in Error.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Java Cocoanut Oil Company, Ltd., a corporation, as principal, and Hartford Accident and Indemnity Company, a corporation, as surety, are held and firmly bound unto the above-named Fidelity and Deposit Company of Maryland in the sum of Five Hundred Dollars ($500), lawful money of the United States, to be paid to said Fidelity and Deposit Company of Maryland, for the payment of which well and truly to be made said principal and said surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Executed and dated this 11th day of October, 1923.

WHEREAS in the above-entitled court, in a suit in said court between said Java Cocoanut Oil Company, Ltd., a corporation, plaintiff, and said Fidelity and Deposit Company of Maryland, a corporation, defendant, a judgment was entered against said defendant, but only for the sum of $1591.64, with interest from December [95] 8, 1921, and costs of suit (the same being a lesser sum than that prayed by said plaintiff), and said plaintiff having obtained, or being about to obtain, from said court a writ of error to reverse the judgment in said action and a citation to said defendant citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Cir-

cuit, to be holden at San Francisco, California, pursuant to said writ of error;

NOW THEREFORE, the condition of this obligation is such, that if said Java Cocoanut Oil Company, Ltd., a corporation, shall prosecute said writ of error to effect, and if it fails to make its plea good, shall answer all costs, then the above obligation to be void; otherwise to remain in full force and effect.

Said Hartford Accident and Indemnity Company, the surety herein, expressly agrees that in case of a breach of any condition hereof, the above-entitled court may, upon notice to it of not less than ten days, proceed summarily in the above-entitled action to ascertain the amount which such surety is bound to pay on account of such breach and render judgment therefor against said surety and award execution therefor.

IN WITNESS WHEREOF, the undersigned, Java Cocoanut Oil Company, Ltd., a corporation, as principal, and Hartford Accident and Indemnity Company, a corporation, as surety, have caused these presents to be executed this 11th day of October, 1923.

JAVA COCOANUT OIL COMPANY, LTD.
By PILLSBURY, MADISON & SUTRO,
Its Attorneys,
Principal.

HARTFORD ACCIDENT AND INDEMNITY COMPANY.
[Seal] By JAMES W. MOYLES,
Its Attorney in Fact,
Surety.

State of California,
City and County of San Francisco,—ss.

On the 11th day of October in the year one thousand nine hundred and twenty-three, before me, John McCallan, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared James W. Moyles, known to me to be the person whose name is subscribed to the within and annexed instrument, as the attorney in fact of the Hartford Accident and Indemnity Company, and acknowledged to me that he subscribed the name of Hartford Accident and Indemnity Company thereto as principal and his own name as the attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my official seal, at my office, in the said city and county of San Francisco, the day and year first above written.

[Seal] JOHN McCALLAN,
Notary Public, in and for the City and County of San Francisco, State of California.

My commission will expire April 12, 1925.

The foregoing bond is hereby approved this 11th day of [96] October, 1923.

(Sgd.) JOHN S. PARTRIDGE,
District Judge.

[Endorsed]: Filed Oct. 11, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [97]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

Praecipe for Transcript of Record.

To the Clerk of the above-entitled Court:

Please prepare a transcript of the record for the Appellate Court in the above-entitled cause, and insert therein the following:

1. The amended complaint.
2. The demurrer to the amended complaint.
3. The order overruling the demurrer to the amended complaint.
4. The memorandum decision given by the Honorable Frank S. Dietrich, United States District Judge in ruling upon the demurrer to the amended complaint.
5. The answer to the amended complaint.
6 The stipulation in writing waiving a jury.
7. The judgment entered herein on or about the 28th day of April, 1923.

8. The opinion of the above-entitled court by the Honorable George M. Bourquin, United States District Judge, dated April 28, 1923, and the order for judgment herein. [98]
9. The bill of exceptions, the attached stipulation concerning its correctness and use, and the order settling, certifying and allowing said bill.
10. All stipulations and orders extending time for the preparation and settlement of the bill of exceptions.
11. All papers filed by the plaintiff herein in the prosecution of its writ of error, including the petition for said writ of error, the assignment of errors and prayer for reversal, the order allowing the writ of error, the original writ of error and citation on writ of error, and the bond on writ of error.
12. This praecipe.

Dated: San Francisco, October 11th, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 11, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [99]

(Title of Court and Cause.)

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of

California, do hereby certify the foregoing ninety-nine (99) pages, numbered from 1 to 99, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the Clerk of said Court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $48.80; that said amount was paid by the plaintiff, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 29th day of October, A. D. 1923.

[Seal] WALTER B. MALING,

Clerk United States District Court, for the Northern District of California. [100]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States, for the Southern Division of the Northern District of California, GREETING:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between Java Cocoanut Oil Company, Ltd., a corporation, plaintiff, and Fidelity and Deposit Company of Maryland, a corporation, defendant, a manifest error hath happened, to the great damage of said Java Cocoanut Oil Company, Ltd., as by its complaint appears, and it being fit and we being willing that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the [101] United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city and county of San Francisco on the 4th day of December next, in the said Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that

error, what of right and according to the law and custom of the United States should be done.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this 11th day of October, in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the United States the one hundred and forty-eighth.

[Seal] WALTER B. MALING,
Clerk of the United States District Court for the Northern District of California.

By J. A. Schaertzer,
Deputy Clerk.

The above writ of error is hereby allowed.

JOHN S. PARTRIDGE,
Judge.

Receipt of copy of the within writ of error is hereby admitted this 11th day of October, 1923.

REDMAN & ALEXANDER,
Attorneys for Defendant.

[Endorsed]: No. 16,715. Southern Division U. S. District Court, Northern District of California, Second Division. Java Cocoanut Oil Company, Ltd., a Corporation, Plaintiff, vs. Fidelity and Deposit Company of Maryland, a Corporation, Defendant. Writ of Error. Filed Oct. 13, 1923. Walter B. Maling, Clerk. [102]

Return to Writ of Error.

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal] WALTER B. MALING,

Clerk U. S. District Court, Northern District of California. [103]

In the Southern Division of the United States District Court, Northern District of California. Second Division.

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America,

To Fidelity and Deposit Company of Maryland, a Corporation, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city and county of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued out of and now on file in the clerk's office of the United States District Court for the Southern Division of the Northern District of California, Second Division, in the above-entitled cause, wherein Java Cocoanut Oil Company, Ltd., a corporation, is plaintiff and plaintiff in error, and you, said Fidelity and Deposit Company, of Maryland, a corporation, are defendant and defendant in error; to show cause, if any there be, [104] why the judgment in said writ of error mentioned should not be corrected and reversed, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable JOHN S. PARTRIDGE, United States District Judge, this 11th day of October, 1923.

JOHN S. PARTRIDGE,
United States District Judge. [105]

Receipt of copy of the within citation on writ of error is hereby admitted this 11th day of Oct., 1923.

REDMAN & ALEXANDER,
Attorneys for Defendant.

[Endorsed]: No. 16,715. Southern Division U. S. District Court, Northern District of California, Second Division. Java Cocoanut Oil Company, Ltd., a Corporation, Plaintiff, vs. Fidelity and Deposit Company of Maryland, a Corporation, Defendant. Citation on writ of Error. Filed Oct. 13, 1923. Walter B. Maling, Clerk.

[Endorsed]: No. 4125. United States Circuit Court of Appeals for the Ninth Circuit. Java Cocoanut Oil Company, Ltd., a Corporation, Plaintiff in Error, vs. Fidelity and Deposit Company of Maryland, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed October 30, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

No. 4126

United States
Circuit Court of Appeals
For the Ninth Circuit.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff in Error,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Names and Addresses of Attorneys of Record.

Messrs. PILLSBURY, MADISON & SUTRO, Standard Oil Bldg., San Francisco, California, Attorneys for Plaintiff in Error.

HARTLEY F. PEART, Esq., Humboldt Bank Bldg., San Francisco, California, Attorney for Defendant in Error.

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Amended Complaint upon Attachment Bond.

Plaintiff, by leave of Court, files this its amended complaint against defendant and for a first cause of action alleges:

I.

That at all times herein mentioned plaintiff was and is now a corporation; that at all of said times defendant was and now is a corporation.

II.

That heretofore, to wit, on or about the 1st day of October, 1920, one Warren R. Porter commenced an action in the above-entitled court against plaintiff herein, to recover damages from plaintiff for alleged breaches by plaintiff of certain written contracts between plaintiff and said Warren R. Porter; that said action was numbered in said court No. 16,452; that thereafter, in said action, and on or about the 27th day of December, 1920, said Warren R. Porter procured a writ of attachment to issue out of and over the seal of said court against the property of plaintiff.

III.

That on or about the 27th day of December, 1920, and in consideration of the issuance of said writ of attachment, defendant executed a certain written bond and undertaking, a copy of which is hereto attached and marked Exhibit "A" and is hereby referred to and made a part hereof the same as if herein set forth at length. [1*]

IV.

That on or about the 21st day of November, 1921, there were pending in said court, in addition to said action No. 16,452, three certain other actions between said Warren R. Porter and this plaintiff, which said actions were numbered in said court, respectively, No. 16,430, No. 16,498 and No. 16,518; that all of said actions arose out of the same transactions as said action No. 16,452, and involved is-

*Page-number appearing at foot of page of original certified Transcript of Record.

sues substantially similar to the issues in said action No. 16,452.

V.

That on or about said 21st day of November, 1921, by an order of said Court on said day duly given or made and entered, said actions No. 16,430, No. 16,452, No. 16,498 and No. 16,518 were consolidated for all purposes; that thereafter, pursuant to said order of said Court, all of said actions were collectively entitled in said court "Warren R. Porter, doing business under the name and style of Porter Trading Company, Plaintiff, vs. Java Cocoanut Oil Co., Ltd., a corporation, Defendant," and were numbered therein No. 16,430.

VI.

That thereafter and on or about the 8th day of December, 1921, judgment was duly given or made and entered in said consolidated action No. 16,430; that said judgment was that said Warren R. Porter take nothing by said action, and that this plaintiff have and recover from said Warren R. Porter the sum of $494,498.30 damages, and its costs of suit; that thereafter, and on or about the 23d day of December, 1921, said costs were duly taxed in favor of this plaintiff and against said Warren R. Porter in the sum of $2,569.45.

VII.

That of said sum of $2,569.45, the sum of $869.19 was awarded to and taxed in favor of this plaintiff, and against said Warren N. Porter, as this plaintiff's costs in said action No. 16,452; that said sum of $869.19 includes no items of costs in said original

action No. 16,430, or in said action No. 16,498, or in said action No. 16,518, or in any other action [2] except No. 16,452, wherein defendant executed said written bond and undertaking Exhibit "A."

VIII.

That writs of execution against the property of said Warren R. Porter have issued out of and over the seal of said Court in said consolidated action No. 16,430, and returned unsatisfied; that there is now due, owing and unpaid on said judgment from said Warren R. Porter to plaintiff herein the sum of $441,557.40 or thereabouts, together with interest thereon at the rate of seven per cent per annum from the 10th day of March, 1922; that, although thereunto requested, defendant has not paid said sum of $869.19, or any part thereof, to plaintiff, and the whole of said sum of $869.19 is now due, owing and unpaid from defendant to plaintiff herein.

IX.

That all and singular the matters and things alleged in this cause of action are ancillary to said action No. 16,452, and within the jurisdiction of this Honorable Court.

And for a second cause of action plaintiff alleges:

I.

Plaintiff hereby refers to and repeats and makes a part hereof, to all intents and purposes the same as if herein set forth at length, the allegations of paragraphs, I, II, III, IV, V, VI and VIII of the first cause of action herein.

II.

That to procure the dissolution of said attachment, it was necessary for plaintiff to defend said action No. 16,452, and said consolidated action No. 16,430; that plaintiff employed for such purpose the law firm of Pillsbury, Madison & Sutro; that said firm represented plaintiff in said action No. 16,452 and in said consolidated action No. 16,430, and defended the same for plaintiff.

III.

That for the services of said firm in said action No. 16,452, and in said consolidated action No. 16,430, plaintiff [3] has paid to said firm sums in excess of $25,000, of which the sum of $10,000 was paid for services of said firm rendered to plaintiff subsequent to the issuance of said attachment and to secure the dissolution thereof; that is to say, that plaintiff has paid said sum of $10,000 to said firm for services rendered by said firm subsequent to the 27th day of December, 1920, in defending said action No. 16,452, and said consolidated action No. 16,430, in so far as the same related to said action No. 16,452; that no part of said sum of $10,000 was paid to said firm for services in or in connection with said original action No. 16,430, or said action No. 16,498, or said action No. 16,518, or for services in said consolidated action No. 16,430, except in so far as the same related to said action No. 16,452; that said sum of $10,000 was the reasonable value of the services of said firm in procuring the dissolution of said attachment, and was a reason-

able sum for plaintiff to have paid to said firm for that purpose.

IV.

That plaintiff has sustained damages by reason of said attachment in the sum of $10,000, which it has paid to said firm, as hereinbefore alleged; that although thereunto requested, defendant has not paid said sum of $10,000, or any part thereof, to plaintiff, and that the whole of said sum is now due, owing and unpaid from defendant to plaintiff herein.

V.

That all and singular the matters and things alleged in this cause of action are ancillary to said action No. 16,452, and within the jurisdiction of this Honorable Court.

WHEREFORE, plaintiff prays judgment against defendant in the sum of $10,869.10, together with interest on the sum of $869.19 at the rate of seven per cent per annum from the 8th day of December, 1921, and for its costs of suit.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff. [4]

State of California,
City and County of San Francisco,—ss.

Alfred Sutro, being first duly sworn, deposes and says: That he is a member of the firm of Pillsbury, Madison & Sutro, attorneys for the plaintiff, Java Cocoanut Oil Company, Ltd., a corporation, named in the foregoing amended complaint; that the reason this affidavit is not made by an officer of said plaintiff, but is made by affiant, is that there

is no officer of the plaintiff in the city and county of San Francisco, State of California, where affiant resides and has his office; that affiant has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

ALFRED SUTRO.

Subscribed and sworn to before me this 14th day of June, 1922.

[Seal] FRANK L. OWEN,

Notary Public in and for the City and County of San Francisco, State of California. [5]

(Title of Court and Cause.)

Exhibit "A."

UNDERTAKING ON ATTACHMENT.

WHEREAS, the above-named Plaintiff has commenced, or is about to commence, an action in the So. Div. of Dist. Court of the U. S. for the No. District of California, 2d Div., against the above-named Defendant upon a contract for the direct payment of money, claiming that there is due to said Plaintiff from the said Defendants the sum of Twenty-seven thousand five hundred and no/100 Dollars, besides interest, and is about to apply for an attachment against the property of said Defendant as security for the satisfaction of any judgment that may be recovered therein;

NOW, THEREFORE, the undersigned Globe Indemnity Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and licensed to do a general surety business in the State of California, in consideration of the premises, and of the issuing of said attachment, does undertake in the sum of Fourteen Thousand (14,000) and no/100 Dollars, U. S. Gold Coin and promise to the effect, that if the said Defendants, or either of them, recover judgment in said action, the said Plaintiff will pay all costs that may be awarded to the said Defendants, or either of them, and all damages, which they, or either of them may sustain by reason of the said attachment, not exceeding the sum of Fourteen Thousand (14,000) and no/100 Dollars, and that if the said attachment is discharged on the ground that the Plaintiff is not entitled thereto under section five hundred and thirty-seven, Code of Civil Procedure, the Plaintiff will pay all damages which the Defendants or either of them may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking.

In testimony whereof, the said surety has caused its corporate name and seal to be hereunto affixed by a duly [6] authorized Agent and atty.-in-fact at S. F., California, on the 27th day of December, A. D. 1920.

[Seal] GLOBE INDEMNITY COMPANY.
By JOHN H. ROBERTSON,
Agent and Atty.-in-fact.

[Endorsed]: Filed Dec. 28, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Receipt of copy of the within amended complaint is hereby admitted this 14th day of June, 1922.

HARTLEY F. PEART,
Attorney for Defendant.

[Endorsed]: Filed Jun. 15, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [7]

(Title of Court and Cause.)

Demurrer.

Now comes the defendant in the above-entitled action and demurring to the amended complaint of the plaintiff herein as grounds of demurrer specifies:

I.

That said amended complaint does not state facts sufficient to constitute a cause of action.

II.

That said amended complaint is uncertain, ambiguous and unintelligible in the particulars hereinafter specified.

III.

That the first count or alleged cause of action set up in said amended complaint does not state facts sufficient to constitute a cause of action.

IV.

That the second count or alleged cause of action set up in said amended complaint does not state facts sufficient to constitute a cause of action.

V.

That said second count is uncertain in the following particulars:

1. That it cannot be ascertained therefrom what services were rendered by the law firm of Pillsbury, Madison & Sutro in defending said action No. 16,-452 that would not have been rendered had no attachment been issued in said action.

2. That it cannot be ascertaind therefrom what services were rendered by said Pillsbury, Madison & Sutro to secure a dissolution of said attachment other than services rendered in defending said action.

3. That it cannot be ascertained therefrom whether or not the sum of ten thousand (10,000.00) dollars alleged to have been paid to said Pillsbury, Madison & Sutro for services rendered by them subsequent to the issuance of said [8] attachment embraced services rendered subsequent to said time in the prosecution of plaintiff's cross-complaint in said action No. 16,430 wherein plaintiff recovered a judgment against said Warren R. Porter in the sum of four hundred ninety-four thousand four hundred ninety-eight and 30/100 (494,498.30) dollars.

4. That it cannot be ascertained therefrom how or why it became nesessary in order to secure a dissolution of said attachment to prosecute a cross-complaint against said Warren R. Porter to recover said sum of four hundred ninety-four thousand four hundred ninety-eight and 30/100 (494,-498.30) dollars.

5. That it cannot be ascertained therefrom how defendant can be liable for costs incurred by plaintiff in the prosecution of its said cross-complaint against said Porter.

6. That it cannot be ascertained therefrom what costs were incurred by plaintiff in defending said action No. 16,452, and what costs were incurred by it in the prosecution of its said cross-complaint against said Porter.

7. That said second count is ambiguous in the same respects in which it is herein alleged to be uncertain.

8. That said second count is unintelligible in the same respects in which it is herein alleged to be uncertain.

WHEREFORE, defendant prays that plaintiff take nothing by this action and that defendant have judgment for its costs.

HARTLEY F. PEART,
Attorney for Defendant.

Receipt of copy of the within demurrer this 25th day of July, 1922, is hereby admitted.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Jul. 25, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [9]

At a stated term, to wit, the July Term, A. D. 1922, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the court-room in the city and county of San Francisco, on Monday, the 18th day of September, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

(Title of Cause.)

Minutes of Court — September 18, 1922 — Order Overruling Demurrer to Amended Complaint.

Defendant's demurrer to the amended complaint heretofore submitted to the Court, Judge Dietrich presiding, being fully considered it is ordered that the memorandum opinion of Judge Dietrich be filed and that in accordance with said opinion, the demurrer to amended complaint be and is hereby overruled. [10]

(Title of Court and Cause.)

Memorandum Decision upon Demurrer to Amended Complaint.

Sept. 14, 1922.

PILLSBURY, MADISON & SUTRO, Attorneys for Plaintiff.

HARTLEY F. PEART, Attorney for Defendant.

DIETRICH, District Judge.—The questions presented by the demurrer to the amended complaint

are identical with those involved in a similar demurrer to the amended complaint in No. 16,715, Java Cocoanut Oil Company, Ltd., a corporation, plaintiff, vs. Fidelity & Deposit Company of Maryland, a corporation, defendant, and the memorandum decision just filed in that case may be regarded as the decision in this case.

Accordingly the demurrer will be overruled.

[Endorsed]: Filed Sept. 18, 1922. Walter B. Maling, Clerk. [11]

(Title of Court and Cause.)

Answer to Amended Complaint.

Now comes the defendant in the above-entitled action and answering unto the amended complaint on file herein denies, admits, and alleges, as follows:

I.

Answering unto the first count set up in said complaint defendant:

1. Alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations contained in the first paragraph of said count wherein it is alleged that at all times thertin mentioned plaintiff was and is now a corporation, and therefore and upon that ground denies the same and the whóle thereof.

2. Alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations contained in paragraph IV of said count wherein it is alleged that the actions numbered in this court No. 16,430, No. 16,498, and No.

16,518 arose out of the same transactions as No. 16,452 therein mentioned and involved issues substantially similar to those in action No. 16,452, and therefore and upon the same ground denies the same and the whole thereof.

3. Alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations contained in the fifth paragraph of said count, and therefore and upon that ground denies the same and the whole thereof.

4. Admits that costs were taxed in favor of defendant in the action referred to in said count as No. 16,452 in the sum of $869.19, but alleges that all of said costs in excess of the sum of $284.25 were incurred in the prosecution of a cross-complaint filed in said action and in action No. 16,430 by the defendant therein, the plaintiff herein, upon which cross-complaint said defendant, the plaintiff herein, recovered judgment against plaintiff in said action in the sum of $494,498.30. [12]

5. Denies that the whole of said sum of $869.19 or any part thereof or any sum at all is now, at any time, or at all was due, owing, and unpaid or due or owing or unpaid from defendant to plaintiff herein.

6. Denies that all and singular or all or singular the matters and things or matters or things or any thereof alleged in the said first count herein are ancillary to said action No. 16,452.

II.

Answering unto the second count set up in said complaint defendant:

1. Hereby refers to and repeats to all intents and purposes the same as if set forth herein at length, the denials and allegations contained in its foregoing answer to the first count or cause of action herein.

2. Denies that to procure the or any dissolution of the attachment referred to in said count it was necessary for plaintiff to defend said action No. 16,452 and/or said consolidated action No. 16,430.

3. Defendant has not information or belief upon the subject sufficient to enable it to answer the allegations contained in paragraph III of the second count wherein it is alleged that the plaintiff herein has paid to the said law firm of Pillsbury, Madison & Sutro sums in excess of $25,000.00 for the services of the said firm in said action No. 16,452 and in said consolidated action No. 16,430, and therefore and upon that ground denies that plaintiff herein paid for said or any services rendered by said firm or any one in both or either of said actions sums in excess of $25,000.00, or any part thereof or any sum at all. And according to its information and belief defendant denies that the sum of $10,000.00 was paid for services to said firm rendered to plaintiff subsequent to the issuance of the said attachment, and denies that any sum was paid by plaintiff to said firm to secure the dissolution of said attachment. And denies that said sum of $10,000.00 or any other sum was or is the reasonable or any value of said services of said firm in procuring the dissolution of said attachment [13] and denies that

said or any sum was a reasonable sum for the plaintiff to have paid said firm for that purpose.

4. Denies that plaintiff has sustained damages or any damage by reason of said attachment in the sum of $10,000.00 or any part thereof or any sum at all; and denies that the whole of said sum or any part thereof or any other sum is now or at any time, or at all was due, owing, and unpaid or due or owing or unpaid from defendant to plaintiff herein.

5. Denies that all and singular or all or singular the matters and things or matters or things or any thereof alleged in said second count are ancillary to said action No. 16,452.

WHEREFORE, defendant prays that plaintiff take nothing by this action and that defendant have judgment for its costs.

HARTLEY F. PEART,
Attorney for Defendant.

State of California,
City and County of San Francisco,—ss.

Frank M. Hall, being first duly sworn, deposes and says: That he is an officer, to wit: Assistant Manager of Pacific Department of the Globe Indemnity Company, a corporation, the defendant in the within entitled action; that he has read the foregoing answer of said defendant and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on information or belief and as to those matters he believes it to be true.

FRANK M. HALL.

Subscribed and sworn to before me, this 13th day of October, 1922.

[Seal] M. V. COLLINS,
Notary Public in and for the City and County of San Francisco, State of California. [14]

Receipt of a copy of the within answer is hereby admitted this 19th day of October, 1922.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 19, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

(Title of Court and Cause.)

Stipulation Waiving Jury.

It is hereby stipulated by and between the respective parties to the above-entitled action that a jury in said action be, and the same is hereby, waived.

Dated: San Francisco, April 17, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.
HARTLEY F. PEART,
Attorney for Defendant.

Approved.
BOURQUIN,
Judge.

[Endorsed]: Filed Apr. 19, 1923. Walter B. Maling, Clerk. [16]

(Title of Court and Cause.)

Judgment.

This cause having come on regularly for trial on the 25th day of April, 1923, being a day in the March, 1923 term, of said court, before the Court sitting without a jury, a trial by jury having been specially waived by stipulation filed herein; Alfred Sutro, Esq., appearing as attorney for plaintiff and Hartley F. Peart, Esq., appearing as attorney for defendant; and the trial having been proceeded with and oral and documentary evidence upon behalf of the respective parties having been introduced and closed and the cause, after arguments by the attorneys, having been submitted to the Court for consideration and decision; and the Court after due deliberation, having filed its opinion and ordered that judgment be entered in favor of plaintiff and against defendant in the sum of $869.19, together with interest at 7% per annum from December 8, 1921, and for costs.

Now therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Java Cocoanut Oil Company, Ltd., a corporation, plaintiff, do have and recover of and from Globe Indemnity Company, a corporation, defendant, the sum of nine hundred fifty-three and 70/100 ($953.70) dollars, together with its costs herein expended taxed at $20.10.

Judgment entered April 28, 1923.

WALTER B. MALING,
Clerk. [17]

United States District Court, California.

No. 16,715.

JAVA ETC. CO.

vs.

FIDELITY ETC. CO.

No. 16,716.

JAVA ETC. CO.

vs.

GLOBE ETC. CO.

(Decision, etc.)

These actions tried together are against sureties in undertakings on attachments against plaintiff. It appears that one Porter brought actions against plaintiff, it counterclaimed and cross-complained, itself brought actions against Porter, was attached, and itself attached, and defendants separately were Porter's sureties in his attachment undertakings; that a few days after levy in said actions, plaintiff gave to the marshal the statutory security for and secured discharge of the lien and release of the property; that in due time all the actions were consolidated and tried, resulting in judgment for plaintiff and against Porter in amount about $500,000; that of the costs recovered, $1591.64 are due to the action of the undertaking of the action first in the title named, and $869.19 are due to the like of the action second so named; that of $50,000 attorneys' fees paid by plaintiff in respect to the actions, no

allocation was made between services due to the attachments and services due to the actions otherwise; that of said fees, $15,000 "is the reasonable value of the services rendered subsequent" to the levy of the attachment, "in defending" the action of the undertaking first aforesaid, original and consolidated, and $10,000 are the like in respect to the action of the undertaking second aforesaid.

Plaintiff seeks recovery of said costs and fees upon the theory that the attachments endured until trial and determination of the actions upon the merits, that the latter was [18] necessary to dispose of the former, and that the whole of said disbursements are "costs awarded" and damages sustained "by reason of the attachment." In support it cites amongst others,

Gregory vs. Co. (Kan.), 185 Pac. 35;
Mosely vs. Co. (Idaho), 189 Pac. 862;
Crom vs. Henderson (Iowa), 175 N. W. 983;
Anvil Gold Co. case, 125 Fed. 725.

Defendant, *contra* so far as said fees are concerned, cites St. Josephs etc. Co. vs. Love (Utah), 195 Pac. 308, and other cases in it referred to. These cases and their citations disclose the conflict in respect to the extent that attorneys' fees are damages in attachments, and that, tho involving statutes of little or no material difference without review of them and their distinctions and differences, it suffices to say that it is believed the theory of defendants, viz., that reasonable attorneys' fees paid in respect to the attachments alone and not those paid in respect to the merits of the actions,

are damages "by reason of" the attachments and for which sureties are liable, is the better rule, sound in principle, sustained by superior authority, and further locally justified by analogy.

Attachments are incidents of an action, and are provisional remedies to secure the fruits of success in trial and determination of the action on the merits. Attorneys' services may or may not be required in respect to the attachments, but are required in respect to the action. Any services rendered to dispose of the attachments, are "by reason of" the attachments, but any rendered to dispose of the action and its merits are not "by reason of" the attachments. They are "by reason of" the action, quite a different thing in fact, statutes and undertaking. That by success upon trial of the action and its merits the attachments are dissolved, is an incidental consequence of services rendered in respect to the former and not to the latter. The rule is like that in respect to other provisional remedies, injunctions, replevin, receiverships. Altho no local court seems to have determined a like issue in an attachment action, the case of Alaska Co. vs. Hirsch (Cal.), 47 Pac. 127, is analogous in its rule that attorneys' [19] fees for dissolution of an injunction are damages "by reason of" it and recoverable from sureties, but not those for trial of the action and its merits, even tho in the latter the enjoined party succeeding, necessarily dissolves the injunction. Clearly, had the party enjoined secured its dissolution on bond, as the plaintiff in the instant case did the attachments, his claims of right to

assign attorneys' fees for trial of the action and its merits as damages "by reason of" the injunction, and to recover them from the sureties, would not have been bettered. So, here. Bonds given by plaintiff (perhaps in duty to minimize damages and the expense of which is awarded it), the levies and the liens and so the "attachments" were released although the writ was not located but endured until it necessarily fell by reason of judgment on the merits for plaintiff. The mere existence of a writ, however, gives no cause of action for damages in so far as attorneys' fees are concerned at least. See Long vs. Bank (Idaho), 165 Pac. 1119. Attachment liens released "the attachments had spent their force and the surety companies became responsible for all damages attributable directly to the attachments." However, subsequent and indirect damages, due to "bringing of the actions may also have damaged or added to the damages, . . . but such result was not due to the attachment"; and the attaching party "and not the surety company was the party responsible therefor."

Fidelity Co. vs. Co., 189 U. S. 143, a case fairly analogous in facts and principle.

So too is the Anvil Gold Co. case, 125 Fed. 725. There as here, the "attachment" was dissolved on security bond, tho there, by order of Court; here, by order of statute. Attorneys' fees as costs or damages are not favored and are recoverable only when with clear support in contract or statute. Plaintiff not having segregated fees for services

due to the attachments from those due to the trial of the action, cannot recover for them. It may be on sufficient data an allowance might be made by the Court, but apparently plaintiff seeks all [20] or none.

So far as costs are concerned, defendants concede them and moved for judgment for plaintiff to that extent.

In argument, however, counsel suggests plaintiff ought not recover $500 it paid for an attachment undertaking in one of the actions and prior to Porter's attachment and the Fidelity Co's. undertaking in the same action.

The sum is within the statutes and defendant's undertaking—"costs awarded," and hence, recoverable.

Unlike damages, costs are not by the statute limited to those "by reason of" the attachment, but include all by reason of or in the action. It is significant that the statute makes this distinction, and impels construction accordingly. Even as plaintiff above, defendant is disposed to ignore small things, advising the Court that if it does erroneously allow the item to plaintiff, no review will be sought, for—*De minimis non curat lex.*

A magnificent gesture to say the least, and a little more this exuberant generosity and lordly spirit, plaintiff's demands might have been paid in full without litigation. Plaintiff is entitled to recover the costs aforesaid, of and from defendants as follows:

From Fidelity Co. $1591.64;

From Globe Co. $869.19, with local legal interest from Dec. 8, 1921, and costs herein. Judgments accordingly.

April 28, 1923.

BOURQUIN, J.

[Endorsed]: Filed April 28, 1923. Walter B. Maling, Clerk. [21]

(Title of Court and Cause.)

Stipulation and Order Extending Time to and Including June 15, 1923, for Preparation, Settlement and Allowance of Bill of Exceptions.

It is hereby stipulated by and between the parties to the above-entitled action that the plaintiff above-named may have to and including the 15th day of June, 1923, within which to prepare, serve and file its proposed bill of exceptions in the above-entitled action.

It is further stipulated that said bill of exceptions may be signed, settled and allowed by the Judge of the above-entitled court during the next ensuing term of said court, as well as during the term in which the judgment in said action was rendered, and the jurisdiction of the above-entitled Court to act upon, settle and allow such bill of exceptions is hereby extended from the present term of said court to and including the next ensuing term of said Court, that is to say, to and including Monday, November 5, 1923.

Dated: San Francisco, May 4, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

REDMAN & ALEXANDER.

It is so ordered.

WM. C. VAN FLEET,
District Judge.

[Endorsed]: Filed May 8, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [22]

(Title of Court and Cause.)

Stipulation and Order Extending Time to and Including July 15, 1923, for Preparation of Bill of Exceptions.

It is hereby stipulated by and between the parties to the above-entitled action that the plaintiff above named may have to and including the 15th day of July, 1923, within which to prepare, serve and file its proposed bill of exceptions in the above-entitled action.

Dated: San Francisco, June 4, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

REDMAN & ALEXANDER,
Attorneys for Defendant.

It is so ordered.

VAN FLEET,
District Judge.

[Endorsed]: Filed Jun. 5, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [23]

(Title of Court and Cause.)

Stipulation and Order Extending Time to and Including August 15, 1923, for Preparation, Settlement and Allowance of Bill of Exceptions.

It is hereby stipulated by and between the parties to the above-entitled action that the plaintiff above named may have to and including the 15th day of August, 1923, within which to prepare, serve and file its proposed bill of exceptions in the above-entitled action.

Dated: San Francisco, July 3, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

HARTLEY F. PEART,
Attorney for Defendant.

It is so ordered.

FRANK H. RUDKIN,
District Judge.

[Endorsed]: Filed Jul. 5, 1923, Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [24]

(Title of Court and Cause.)

Stipulation and Order Extending Time to and Including September 15, 1923, for Preparation, Settlement and Allowance of Bill of Exceptions.

It is hereby stipulated by and between the parties to the above-entitled action that the plaintiff above named may have to and including the 15th day of September, 1923, within which to prepare, serve and file its proposed bill of exceptions in the above-entitled action.

Dated: San Francisco, August 6th, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

HARTLEY F. PEART,
Attorney for Defendant.

It is so ordered.

WM. C. VAN FLEET,
District Judge.

[Endorsed] Filed Aug. 6, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [25]

(Title of Court.)

No. 16,715.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,

Defendant.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Stipulation to Foregoing as the Bill of Exceptions in Both the Above-entitled Actions and to the Correctness of the Same.

It is hereby stipulated that, subject to the hereinafter mentioned objection of the defendant in each action above entitled, the attached and foregoing may be and is the bill of exceptions in both the above-entitled actions and that separate bills of exceptions need not be prepared or filed therein; and that, subject to the said objection of said defendants, the above and foregoing constitutes a

true and correct bill of exceptions in said actions (said actions having been duly consolidated for trial) and contains all of the proceedings had and all of the evidence offered and received on the trial of said actions and all of the rulings of the Court made during the trial of said actions; and that, subject to said objection, the same may be settled and allowed as the bill of exceptions in said two actions and to said rulings and to the decision of the Court and said two actions, and each of them; the defendant in each of said actions objects to the matter contained in said bill of exceptions between line 7, page 54, to and including line 11, page 55 thereof, and asks that the same be stricken out, said objection having been proposed by said defendants as an amendment to said bill of exceptions within the time and in the matter required by law. [26]

Dated: September 27, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

REDMAN & ALEXANDER,
Attorneys for Defendant Fidelity and Deposit Company of Maryland.

HARTLEY F. PEART,
Attorney for Defendant Globe Indemnity Company.

The objection aforesaid of defendants is sustained, and the subject matter thereof stricken from the bill, in that it is superfluous.

BOURQUIN, J.

* * * * * * * * *

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Assignment of Errors and Prayer for Reversal.

Java Cocoanut Oil Company, Ltd., a corporation, plaintiff and plaintiff in error in the above-entitled cause, contends that in the record, opinion, decision and final judgment in said cause there is manifest and material error, and said plaintiff and plaintiff in error now makes, files and presents the following assignments on which it will rely in the prosecution of its writ of error in said cause:

I.

That the above-entitled court erred in ordering, in rendering and in entering the final judgment herein dated April 28, 1923.

II.

That the said court erred in not ordering, rendering and entering judgment for and in favor of the plaintiff in the sum of $10,869.19, together with interest on the sum of $869.19 at the rate of seven

per cent per annum from the 8th day of December, 1921, and for its costs of suit, as prayed in the amended complaint [30] herein.

III.

That the said court erred in holding, adjudging and determining that said plaintiff was entitled to judgment only in the sum of $869.19, with local legal interest from December 8, 1921, and costs herein, and in not holding, adjudging and determining that plaintiff was entitled to judgment for attorneys' fees upon the second cause of action in the amended complaint herein.

IV.

That the said court erred in holding, adjudging and determining that said plaintiff was not entitled to recover attorneys' fees upon the second cause of action in the amended complaint herein, and in not ordering and entering judgment in plaintiff's favor for such fees.

V.

That the facts found by said court are insufficient to support the judgment herein, in so far as said judgment is that plaintiff do not have and recover attorneys' fees upon the second cause of action in the amended complaint herein.

VI

That the said court erred in holding, adjudging and determining that the security, given the United States marshal by the plaintiff to release its property from the attachment in said second cause of action referred to, discharged the said attachment.

VII.

That the said court erred in holding, adjudging and determining that plaintiff, not having segregated said attorneys' fees for services due to said attachment from those due to the trial of the action in which said attachment issued, cannot recover for them. [31]

VIII.

That the said court erred in holding, adjudging and determining that the attorneys' fees mentioned in the second cause of action of the amended complaint were not recoverable by plaintiff because they were not damages sustained by plaintiff by reason of said attachment.

IX.

That the said court erred in holding, adjudging and determining that services by plaintiff's attorneys to dispose of the action No. 16,452 and consolidated action No. 16,430, in the amended complaint mentioned, and the merits thereof, were not "by reason" of said attachment.

X.

That the trial court erred in admitting in evidence over plaintiff's objection and subject to plaintiff's exception the bond given the United States marshal by this plaintiff to release its property from attachment in action No. 16,430, mentioned in said amended complaint.

XI.

That the trial court erred in admitting in evidence over plaintiff's objection and subject to plaintiff's exception the bond given the United States

marshal by this plaintiff to release its property from attachment in action No. 16,452, mentioned in said amended complaint.

XII.

That the trial court erred in admitting in evidence over plaintiff's objection and subject to plaintiff's exception the judgment-roll and all the papers in the consolidated action No. [32] 16,430, mentioned in said amended complaint.

WHEREFORE, plaintiff prays that said judgment be reversed and that said court be directed to render and enter judgment in favor of plaintiff in the amount prayed in the amended complaint herein.

Dated: San Francisco, October 11th, 1923.

PILLSBURY, MADISON & SUTRO.

Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 11, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [33]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Order Allowing Writ of Error.

On this 11th day of October, 1923, came the plaintiff herein, Java Cocoanut Oil Company, Ltd., a corporation, and filed herein and presented its petition praying for the allowance of a writ of error in the above-entitled action to the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing to the Court that said petition be granted and a transcript of the record in said action upon the judgment therein rendered, duly authenticated, together with the assignment of errors, the original writ of error and citation, should be sent to the United States Circuit Court of Appeals for the Ninth Circuit, as prayed, in order that such proceedings may be had as may be just to correct any errors:

NOW, THEREFORE, it is hereby ordered that a writ of eror be and the same is hereby allowed herein as aforesaid, and that the said writ of error issue out of and over the seal of the above-entitled court; that the amount of bond on said writ of error be and the same is hereby fixed at $500; that a true copy of the record, opinion of the court, bill of exceptions, [34] assignments of errors, and all proceedings and papers upon which the judgment herein was rendered, together with the prayer for reversal, original writ of error and citation, all duly authenticated according to law, shall be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, in order that said court may inspect the same and take

such action thereon as it may deem proper according to law and justice.

Dated: San Francisco, October 11th, 1923.

(Sgd.) JOHN S. PARTRIDGE,
Judge.

[Endorsed]: Filed Oct. 11, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [35]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Cost Bond in Error.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Java Cocoanut Oil Company, Ltd., a corporation, as principal, and Hartford Accident and Indemnity Company, a corporation, as surety, are held and firmly bound unto the above-named Globe Indemnity Company, in the sum of Five Hundred Dollars ($500), lawful money of the United States, to be paid to said Globe Indemnity

Company, for the payment of which well and truly to be made, said principal and said surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Executed and dated this 11th day of October, 1923.

WHEREAS in the above-entitled court, in a suit in said court between said Java Cocoanut Oil Company, Ltd., a corporation, [36] plaintiff, and said Globe Indemnity Company, a corporation, defendant, a judgment was entered against said defendant, but only for the sum of $869.19, with interest from December 8, 1921, and costs of suit (the same being a lesser sum than that prayed by said plaintiff), and said plaintiff having obtained, or being about to obtain, from said court a writ of error to reverse the judgment in said action and a citation to said defendant citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California, pursuant to said writ of error:

NOW, THEREFORE, the condition of this obligation is such, that if said Java Cocoanut Oil Company Ltd., a corporation, shall prosecute said writ of error to effect, and if it fails to make it plea good, shall answer all costs, then the above obligation to be void; otherwise to remain in full force and effect.

Said Hartford Accident and Indemnity Company, the surety herein, expressly agrees that in case of a breach of any condition hereof, the above-entitled court may, upon notice to it of not less than ten

days, proceed summarily in the above- entitled action to ascertain the amount which said surety is bound to pay on account of such breach and render judgment therefor against said surety and award execution therefor.

IN WITNESS WHEREOF, the undersigned, Java Cocoanut Oil Company, Ltd., a corporation, as principal, and Hartford Accident and Indemnity Company, a corporation, as surety, have caused these [37] presents to be executed this 11th day of October, 1923.

JAVA COCOANUT OIL COMPANY, LTD.,
By PILLSBURY, MADISON & SUTRO,
Its Attorneys,
Principal.

[Seal] HARTFORD ACCIDENT AND INDEMNITY COMPANY,
By JAMES W. MOYLES,
Its Attorney in Fact.
Surety.

State of California,
City and County of San Francisco,—ss.

On the 11th day of October in the year one thousand nine hundred and twenty-three, before me, John McCallan, a notary public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared James W. Moyles, known to me to be the person whose name is subscribed to the within and annexed instrument, as the Attorney in fact of the Hartford Accident and Indemnity Company, and acknowledged to me that he subscribed the name of Hartford Accident and

Indemnity Company thereto as principal and his own name as the Attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my official seal, at my office, in the said City and County of San Francisco, the day and year first above writen.

[Seal] JOHN McCALLAN.

Notary Public, in and for the City and County of San Francisco, State of California.

My commission will expire April 12, 1925.

The foregoing bond is hereby approved this 11th day of October, 1923.

(Sgd.) JOHN S. PARTRIDGE,
District Judge.

[Endorsed]: Filed Oct. 11, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [38]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

Please prepare a transcript of the record for the Appellate Court in the above-entitled cause, and insert therein the following:

1. The amended complaint.
2. The demurrer to the amended complaint.
3. The order overruling the demurrer to the amended complaint.
4. The memorandum decision given by the Honorable Frank S. Dietrich, United States District Judge, in ruling upon the demurrer to the amended complaint.
5. The answer to the amended complaint.
6. The stipulation in writing waiving a jury.
7. The judgment entered herein on or about the 28th day of April, 1923.
8. The opinion of the above-entitled court by the Honorable George M. Bourquin, United States District Judge, dated April 28, 1923, and the order for judgment herein. [39]
9. Copy of stipulation attached to bill of exceptions in the case of Java Cocoanut Oil Company, Ltd., vs. Fidelity and Deposit Company of Maryland (No. 16,715), and on file with the papers in said last mentioned case, said stipulation referring to the correctness and use of said bill of exceptions.
10. All stipulations and orders extending time for the preparation and settlement of the bill of exceptions herein.

11. All papers filed by the plaintiff herein in the prosecution of its writ of error, including the petition for said writ of error, the assignment of errors and prayer for reversal, the order allowing the writ of error, the original writ of error and citation on writ of error, and the bond on writ of error.
12. This praecipe.

Dated: San Francisco, October 11th, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 11, 1923. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [40]

(Title of Court and Cause.)

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing forty (40) pages, numbered from 1 to 40, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $16.85; that said amount

was paid by the plaintiff, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 29th day of October, A. D. 1923.

[Seal] WALTER B. MALING,
Clerk United States District Court, for the Northern District of California. [41]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States, for the Southern Division of the Northern District of California, GREETING:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is

in the said District Court before you, or some of you, between Java Cocoanut Oil Company, Ltd., a corporation, plaintiff, and Globe Indemnity Company, a corporation, defendant, a manifest error hath happened, to the great damage of said Java Cocoanut Oil Company, Ltd., as by its complaint appears, and it being fit and we being willing that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, [42] distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city and county of San Francisco on the 4th day of December next, in the said Circuit Court of Appeals, to be there and then held, that the record and proceedings being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this 11th day of October, in the year of our Lord one thousand nine hundred and twenty-three and of the Independence

of the United States the one hundred and forty-eighth.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, for the Northern District of California.

By J. A. Schaertzer,
Deputy Clerk.

The above writ of error is hereby allowed.

JOHN S. PARTRIDGE,
Judge. [43]

Receipt of copy of the within writ of error is hereby admitted this 11th day of October, 1923.

HARTLEY F. PEART,
Attorney for Defendant.

[Endorsed]: No. 16,716. Southern Division, U. S. District Court, Northern District of California, Second Division. Java Cocoanut Oil Company, Ltd., a Corporation, Plaintiff, vs. Globe Indemnity Company, a Corporation, Defendant. Writ of Error. Filed Oct. 13, 1923. Walter B. Maling, Clerk.

Return to Writ of Error.

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned,

at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court:

[Seal] WALTER B. MALING,

Clerk U. S. District Court, Northern District of California. [44]

In the Southern Division of the United States District Court, Northern District of California, Second Division.

No. 16,716.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,

Plaintiff,

vs.

GLOBE INDEMNITY COMPANY, a Corporation,

Defendant.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America, to Globe Indemnity Company, a Corporation, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city and county of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued out of and now on file in the clerk's office of the United States District

Court for the Southern Division of the Northern District of California, Second Division, in the above-entitled cause, wherein Java Cocoanut Oil Company, Ltd., a corporation, is plaintiff and plaintiff in error, and you, said Globe Indemnity Company, a corporation, are defendant and defendant [45] in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and reversed, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable JOHN S. PARTRIDGE, United States District Judge, this 11th day of October, 1923.

JOHN S. PARTRIDGE,
United States District Judge. [46]

Receipt of copy of the within citation on writ of error is hereby admitted this 11th day of October, 1923.

HARTLEY F. PEART,
Attorney for Defendant.

[Endorsed]: No. 16,716. Southern Division, U. S. District Court, Northern District of California, Second Division. Java Cocoanut Oil Company, Ltd., a Corporation, Plaintiff, vs. Globe Indemnity Company, a Corporation, Defendant. Citation on Writ of Error. Filed Oct. 13, 1923. Walter B. Maling, Clerk.

[Endorsed]: No. 4126. United States Circuit Court of Appeals for the Ninth Circuit. Java Cocoanut Oil Company, Ltd., a Corporation, Plaintiff

in Error, vs. Globe Indemnity Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed October 30, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4125.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,
Plaintiff and Plaintiff in Error,
vs.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,
Defendant and Defendant in Error.

No. 4126.

JAVA COCOANUT OIL COMPANY, LTD., a Corporation,
Plaintiff and Plaintiff in Error,
vs.
GLOBE INDEMNITY COMPANY, a Corporation,
Defendant and Defendant in Error.

Stipulation and Order for Consolidation of Causes and Printing of Record.

It is hereby stipulated that the above-entitled actions may be consolidated for purposes of briefing and argument in the above-entitled court; that said actions may be docketed together in said court and that the records in said actions may be printed under one cover.

Dated: San Francisco, October 30, 1923.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff and Plaintiff in Error.

REDMAN & ALEXANDER,
Attorneys for Fidelity and Deposit Company of Maryland, Defendant and Defendant in Error.

HARTLEY F. PEART,
Attorney for Globe Indemnity Company, Defendant and Defendant in Error.

It is so ordered.

HUNT,
United States Circuit Judge.

[Endorsed]: Nos. 4125 and 4126. In the United States Circuit Court of Appeals for the Ninth Circuit. Java Cocoanut Oil Company, Ltd., a Corporation, Plaintiff and Plaintiff in Error, vs. Fidelity and Deposit Company of Maryland, a Corporation, Defendant and Defendant in Error. Java Cocoanut Oil Company, Ltd., a Corporation, Plaintiff and Plaintiff in Error, vs. Globe Indemnity Company, a Corporation, Defendant and Defendant in Error. Stipulation for Consolidation of Causes and Printing of Record. Filed Nov. 2, 1923. F .D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.